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16 Attorneys for Plaintiffs

17
 18 IN THE UNITED STATES DISTRICT COURT
 19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 KAROLINE V. SMITH, individually
 21 and as trustee of the J. and K.
 22 Revocable Inter Vivos Trust dated
 23 January 12, 1990, doing business as
 Guardian Self Storage; UPWARD
 24 INVESTMENTS, LLC, doing
 business as Guardian Self Storage;
 25 JANARDHAN GRANDE;
 26 JANARDHAN GRANDE, MD, A
 MEDICAL CORPORATION, doing
 27 business as Central Valley Pain
 28 Management; MUKESH BHATT,

Case No. 5:16-cv-01893-JLS(JPRx)

AGREED PROTECTIVE ORDER

[Stipulation for Entry of Agreed
 Protective Order Filed Herewith]

[PROPOSED] PROTECTIVE ORDER

1 MD, MUKESH BHATT, MD, INC.,
2 C. MICHAEL JONES, JR.; C.
3 MICHAEL, INC.; JOSHUA AGLE;
4 PIETER AGLE, individually and
5 doing business as SHAGMART; and
6 HARISH KHER, MD,

7
8 Plaintiffs,

9 v.

10 AMERICAN GENERAL LIFE
11 INSURANCE COMPANY;
12 SEA NINE ASSOCIATES, INC.;
13 INNOVATIVE PRIVATE
14 STRATEGIES & INSURANCE
15 SERVICES, INC.; I.P.S. PRIVATE
16 ADVISORS; PETER MORDIN; and
17 DOES 1 – 10,

18 Defendants.

19 WHEREAS, Plaintiffs and Defendants (collectively the “Parties”) may seek
20 discovery of documents, information, or other materials that contain the private and
21 confidential medical records or the financial records of non-parties;

22 WHEREAS, private and confidential medical records or financial records of
23 non-parties are protected from public disclosure by, amongst other laws and
24 regulations, the Federal Health Insurance Portability and Accounting Act (45
25 C.F.R. § 164.508) (prohibiting disclosure of confidential medical information),
26 California’s Confidentiality of Medical Information Act (CAL. CIV. CODE § 56, *et*
27 *seq.*) (same), and the California Financial Information Privacy Act (CAL. FIN. CODE
28 § 4050, *et seq.*) (prohibiting disclosure of protected financial information);

WHEREAS, the Parties in this action have or may seek discovery of
documents and information for which “good cause” exists to protect the
information from being disclosed to the public, including but not limited to

1 documents and information that may contain individuals' private information
2 and/or a party's confidential financial information; specifically, certain documents
3 and materials contain internal memoranda, confidential procedures containing
4 proprietary actuarial and underwriting information, personal and medical records of
5 the insureds, private information regarding owners, beneficiaries, and assignments
6 of life insurance policies, and personal financial information regarding non-parties'
7 financial analyses;

8 WHEREAS, Federal Rule of Civil Procedure 26(c)(1)(G) permits the Court
9 to restrict public access to documents containing of confidential or non-public
10 commercial information that may be produced or provided in discovery;

11 WHEREAS, the Parties to this action believe that good cause exists to enter
12 this protective order as set forth in the accompanying Stipulation for Entry of
13 Agreed Protective Order ("Stipulation"); and

14 WHEREAS, the Court finds that good cause exists for the entry of this
15 protective order under *Phillips v. G.M. Corp.*, 307 F.3d 1206, 1209 (9th Cir. 2002),
16 and pursuant to Federal Rule of Civil Procedure 26(c), the Court orders as follows:

17 1. This Agreed Protective Order ("Order") shall govern the handling of
18 documents, depositions, deposition exhibits, interrogatory responses, admissions,
19 and any other information produced, given or exchanged by and among the parties
20 and any non-parties to this action (the "Litigation") in connection with discovery in
21 the Litigation (such information hereinafter referred to as "Discovery Material").

22 2. Any party or non-party who provides or has provided information or
23 material to any party in connection with this Litigation (a "Producing Party") may
24 designate any Discovery Material as "CONFIDENTIAL" under the terms of this
25 Order if the Producing Party believes in good faith that such Discovery Material
26 contains non-public, confidential, proprietary, or commercially or personally
27 sensitive information that requires the protections provided in this Order
28 ("Confidential Discovery Material").

1 3. The designation by any Producing Party of Discovery Material as
2 “CONFIDENTIAL” shall be made only after review by an attorney for the
3 designating party based on a good faith belief that there is a valid basis for such
4 designation.

5 4. Confidential Discovery Material, or information derived therefrom,
6 shall be used solely for purposes of this Litigation and shall not be used for any
7 other purpose, including any other lawsuit, or any other business, commercial, or
8 personal purpose, except that nothing in this paragraph shall be deemed a waiver of
9 any party’s rights to obtain discovery in another proceeding in accordance with
10 applicable law.

11 5. The designation of Discovery Material as “CONFIDENTIAL” for
12 purposes of this Order shall be made in the following manner by any Producing
13 Party:

14 a. in the case of documents or other materials (apart from
15 depositions or other pretrial discovery-related testimony), by affixing the legend
16 “CONFIDENTIAL” to each page containing any Confidential Discovery Material,
17 provided that the failure to designate a document as CONFIDENTIAL does not
18 constitute a waiver of such claim if, promptly after the discovery of inadvertent
19 production, the Producing Party properly designates the Discovery Material as
20 “CONFIDENTIAL”, with the effect that such document is subject to the
21 protections of this Order; and

22 b. in the case of depositions or other pretrial discovery-related
23 testimony: (i) by a statement on the record, by counsel, at or before the conclusion
24 of the deposition; or (ii) by written notice, sent by counsel to all parties within ten
25 (10) days after the receipt of the transcript of the deposition or other pretrial
26 testimony, provided that only those portions of the transcripts designated as
27 “CONFIDENTIAL” shall be deemed Confidential Discovery Material. All
28 depositions will be treated as confidential until the expiration of the ten (10) day

1 period. The parties may modify this procedure for any particular deposition,
2 through agreement on the record at such deposition or in writing, without further
3 order of the Court. No such modification, however, will have the force or effect of
4 a court order.

5 6. Except as specifically provided for in this or subsequent Court orders,
6 Confidential Discovery Material or its contents shall not be revealed, disclosed, or
7 otherwise made known to persons, directly or indirectly, other than the following:

8 a. the parties to the Litigation, including the parties' officers,
9 directors, managers, and employees (including in-house counsel), who are
10 necessary to assist counsel for the parties in the conduct of the Litigation for use in
11 accordance with this Order;

12 b. experts or consultants who are not officers, directors, managers
13 or employees of any party and whom counsel of record deems necessary to assist
14 counsel of record in the conduct of this Litigation and who sign the undertaking
15 attached as **Exhibit A**;

16 c. counsel for the parties, employees, contractors, and vendors of
17 such counsel assisting in the conduct of the action for use in accordance with the
18 terms of this Order;

19 d. trial or deposition witnesses;

20 e. the Court and Court personnel, including jury members (if
21 applicable);

22 f. court reporters employed in connection with this Litigation; and

23 g. any person who, by the parties' agreement or court order, serves
24 as a mediator of this dispute, and employees of any such mediator(s) assisting in the
25 conduct of the mediation.

26 7. Every person given access to Confidential Discovery Material or
27 information contained therein shall be advised that the information is being
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1 disclosed pursuant and subject to the terms of this Order and may not be disclosed
2 other than pursuant to the terms thereof.

3 8. Motions and other pleadings containing Confidential Discovery
4 Material shall be submitted under seal in accordance with applicable law and
5 procedure, including the local rules and procedures set forth by the United States
6 District Court for the Central District of California¹ and the assigned Judge's
7 standing orders. Pending the ruling on the application, the papers or portions
8 thereof subject to the sealing application shall be lodged under seal.

9 9. A party filing a motion or other pleading containing Discovery
10 Material designated "CONFIDENTIAL" by another party is relieved of the
11 obligation of preparing the application or motion to seal if, at least five days before
12 the date of filing, the filing party gives the designating party notice of the
13 confidential material contained in the motion or other pleading by e-mail or
14 facsimile. If such notice is given: (a) the designating party shall prepare the
15 application or motion to seal in compliance with applicable law and procedure and
16 provide it to the filing party by noon on the day before the filing; and (b) the filing
17 party shall file the application or motion to seal along with the motion or other
18 pleading containing Confidential Discovery Material. In the event that the motion
19 or pleading itself is the subject of the application to seal (such as a motion which
20 quotes or excerpts Confidential Discovery Material), the filing party shall submit all
21 materials to be filed under seal with the Court in accordance with the Court's
22 Standing Order and the applicable Local Rules. If this dispute proceeds to trial, the
23 designation of Discovery Material as "CONFIDENTIAL" does not limit a party or
24 the parties from using that Discovery Material at trial as otherwise allowed by
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26 ¹ See, e.g., Local Rule 79-5 and guidance provided at the following web page:
27 [https://www.cacd.uscourts.gov/sites/default/files/documents/JLS/AD/Guide%20to%20Electronically%20Filing%20Under-](https://www.cacd.uscourts.gov/sites/default/files/documents/JLS/AD/Guide%20to%20Electronically%20Filing%20Under-Seal%20Document%20in%20Civil%20Cases.pdf)
28 [Seal%20Document%20in%20Civil%20Cases.pdf](https://www.cacd.uscourts.gov/sites/default/files/documents/JLS/AD/Guide%20to%20Electronically%20Filing%20Under-Seal%20Document%20in%20Civil%20Cases.pdf)

1 applicable law (unless the Court issues a further order requiring that confidentiality
2 be maintained). For example, Discovery Material designated as
3 “CONFIDENTIAL” may be used as evidence at trial. After exchanging and/or
4 identifying the materials they intend to use at trial as part of the pre-trial
5 procedures, the Parties may move the Court for the sealing or treatment of
6 Confidential materials prior to such materials’ public disclosure. Nothing in this
7 paragraph is intended to restrict the ability of the parties to use Confidential
8 Discovery Material at trial to the fullest extent permissible by applicable law.

9 10. Any party to the Litigation who objects to another party’s designation
10 of Discovery Material as “CONFIDENTIAL” shall give written notice of his or her
11 objection to the Producing Party. If the parties cannot agree on a resolution of the
12 dispute, the Parties shall follow the procedures to obtain a decision from the Court
13 that is set forth in Local Rule 37 and all procedures applicable to filing documents
14 under seal set forth by this Order, the Court’s Standing Order, and the Local Rules.

15 11. Entering into, agreeing to, and/or producing or receiving Confidential
16 Discovery Material or otherwise complying with the terms of this Order shall not:

17 a. operate as an admission by any party that any particular
18 Confidential Discovery Material contains or reflects trade secrets or any other type
19 of confidential information;

20 b. prejudice in any way the rights of the parties to object to the
21 production of documents they consider not subject to discovery, or operate as an
22 admission by any party that the restrictions and procedures set forth herein
23 constitute adequate protection for any particular information deemed by any party
24 to be Confidential Discovery Material;

25 c. prejudice in any way the rights of any party to object to the
26 authenticity or admissibility into evidence of any document, testimony, or other
27 evidence subject to this Order;

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1 d. prejudice in any way the rights of a party to seek a
2 determination by the Court whether any Discovery Material or Confidential
3 Discovery Material should be subject to the terms of this Order;

4 e. prejudice in any way the rights of a party to petition the Court
5 for a further protective order relating to any purportedly confidential information;

6 f. prevent the parties to this Order from agreeing to alter or waive
7 the provisions or protections provided for herein with respect to any particular
8 Discovery Material; or

9 g. be construed as an agreement by any person to produce or
10 supply any document, or as a waiver by any person of his right to object to the
11 production of any document, or as a waiver of any claim of privilege with respect to
12 the production of any document.

13 12. This Order has no effect upon, and shall not apply to, the parties' use
14 of their own respective Confidential Discovery Material for any purpose. Nothing
15 herein shall: (i) prevent a party from disclosing Confidential Discovery Material or
16 other information to officers, directors, or employees of the Producing Party; or
17 (ii) impose any restrictions on the use or disclosure by a party of documents,
18 materials, or information designated as CONFIDENTIAL obtained lawfully by
19 such party independently of the discovery proceedings in this Litigation and not
20 otherwise subject to confidentiality restrictions.

21 13. If a party in possession of Confidential Discovery Material receives a
22 subpoena or other compulsory process from a non-party to this Order seeking
23 production or other disclosure of such confidential information, that party shall give
24 written and telephone notice to counsel for the Producing Party within five (5)
25 business days after receipt of the subpoena or other compulsory process; such
26 notice shall identify the confidential information sought and enclose a copy of the
27 subpoena or other compulsory process. If the Producing Party timely seeks a
28 protective order, the party to which the subpoena or other compulsory process was

1 issued or served shall not, to the fullest extent permitted by applicable law, produce
2 the confidential information called for prior to receiving a court order or the consent
3 of the Producing Party. In the event that such Confidential Discovery Material
4 containing confidential information is produced to the non-party, such material shall
5 still be treated by the parties to this action in accordance with the designation as
6 CONFIDENTIAL by the parties to this Order.

7 14. In the event a Producing Party produces two or more identical copies
8 of a document and any such copy is designated with a lesser degree of
9 confidentiality than any other copy, all such identical documents shall be treated in
10 accordance with the most restrictive designation on any copy once notice of the
11 inconsistent designation is provided by the Producing Party. The Producing Party
12 shall be responsible for informing the party receiving the inconsistently designated
13 information of the inconsistent designation; however, if any person subject to this
14 Order receives such inconsistently designated information, and has actual
15 knowledge of the inconsistent designation, the person shall treat all copies in
16 accordance with the most restrictive designation.

17 15. In the event that a Producing Party inadvertently produces to any other
18 party any materials that are privileged or otherwise immune from discovery, in
19 whole or in part, pursuant to the attorney-client privilege, work product doctrine, or
20 other applicable privilege, such privileged materials may be retrieved by the
21 Producing Party by giving written notice to all parties to whom the Producing Party
22 inadvertently provided copies of the produced privileged materials of the claim of
23 privilege and the identity of the documents inadvertently produced pursuant to
24 Federal Rule of Civil Procedure 26(b)(5)(B). Upon receipt of such notice, all parties
25 or other persons who have received a copy of the inadvertently produced materials
26 shall promptly return any and all copies of those materials to the Producing Party or
27 destroy the materials. The terms of this paragraph shall not be deemed a waiver of
28 a party's right to challenge the Producing Party's designation of materials as

1 privileged (provided, however, that any such challenge to the designation may only
2 be made following the return of such identified documents to the Producing Party),
3 nor shall such inadvertent production of any material that is subsequently retrieved
4 pursuant to this paragraph be deemed to be a waiver of the claim of privilege
5 asserted. No party shall use any inadvertently produced privileged materials, or
6 information gleaned from any inadvertently produced privileged materials, in
7 connection with this Litigation or any related actions.

8 Any party returning material to a Producing Party pursuant to this paragraph
9 15 may move the Court for an order compelling production of the material. Nothing
10 in this paragraph waives the returning Party's argument that the Producing Party
11 waived privilege or applicable immunity by failing to rectify the error in a timely
12 manner after discovery of the inadvertent production and/or acted without
13 reasonable diligence. However, the Parties shall not assert as ground for entering
14 such an order that the Producing Party waived any privilege because of the mere
15 fact of inadvertent production alone. Any motion made to the Court under this
16 Paragraph shall be made pursuant to the procedures set forth in Local Rule 37 and
17 this Order.

18 16. Any person receiving Confidential Discovery Material shall not
19 disclose such information to any person who is not entitled to receive such
20 information under this Order. If Confidential Discovery Material is disclosed to
21 any person other than in the manner authorized by this Order, the person
22 responsible for the disclosure must immediately bring all pertinent facts relating to
23 such disclosure to the attention of counsel for all parties and, without prejudice to
24 other rights and remedies of any party, make a reasonable good faith effort to
25 retrieve such materials and to prevent further disclosure by it or by the person who
26 received such information.

27 17. In the event additional parties join or are joined in this Litigation, they
28 shall not have access to Confidential Discovery Material until the newly-joined

1 party by its counsel has executed and, at the request of any party, filed with the
2 Court its agreement to be fully bound by this Order, unless the Court orders
3 otherwise.

4 18. Non-parties who produce documents pursuant to this Order shall have
5 the benefit of this Order, and shall be entitled to enforce its terms, if they agree to
6 be bound hereby.

7 19. The parties agree to be bound by the terms of this Order pending the
8 entry of this Order, or another order governing confidentiality by the Court.

9 20. The provisions of this Order shall, absent written permission of the
10 Producing Party or further order of the Court, continue to be binding throughout
11 and after the conclusion of the Litigation, including without limitation any appeals
12 therefrom.

13 21. Within sixty (60) days after receiving notice of the entry of an order,
14 judgment, or decree finally disposing of or resolving the Litigation, and upon the
15 written request of the Producing Party, all persons having received Confidential
16 Discovery Material shall either make a good faith effort to return such material and
17 all copies thereof (including summaries and excerpts) to counsel for the party that
18 produced it or destroy all such Confidential Discovery Material and certify that fact.
19 However, counsel for the parties shall be entitled to retain court papers, deposition
20 and trial transcripts and attorney work product (including Discovery Material
21 containing Confidential Discovery Material), provided that such counsel, and
22 employees of such counsel, shall not disclose the court papers or attorney work
23 product to any person, except pursuant to court order or agreement with the
24 Producing Party. Notwithstanding this provision, Counsel are entitled to retain an
25 archival copy of all pleadings, motion papers, trial, deposition, and hearing
26 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
27 reports, attorney work product, and consultant and expert work product, even if
28 such materials contain Confidential Discovery Material. Any such archival copies

1 that contain or constitute Confidential Discovery Material remain subject to this
2 Protective Order. The Producing Party shall retain a complete set of Confidential
3 Discovery Material for at least five years after the conclusion of the litigation which
4 other parties and/or their counsel can subpoena if needed.

5 22. During the pendency of this Litigation, any party objecting to the
6 designation of any Discovery Material or testimony as Confidential Discovery
7 Material may, after making a good faith effort to resolve any such objection, present
8 the dispute to the Court under Local Rule 37. While such dispute is pending, the
9 Discovery Material or testimony in question shall be treated as Confidential
10 Discovery Material pursuant to this Order. The provisions of this paragraph are not
11 intended to shift the burden of establishing confidentiality. The burden of
12 establishing confidentiality rests with the Producing Party.

13 23. In the event that any Confidential Discovery Material is used in any
14 court proceeding in this Litigation or any appeal therefrom, said Confidential
15 Discovery Material shall not lose its status as Confidential Discovery Material
16 through such use unless the Court orders otherwise. Counsel shall confer on such
17 procedures as are necessary to protect the confidentiality of any documents,
18 information, and transcripts used in the course of any court proceeding, subject to
19 any subsequent trial Orders by this Court that relate to the trial and the use of
20 Confidential Discovery Materials.

21 24. Each of the parties hereto shall be entitled to seek modification of this
22 Order by application to the Court on notice to the other parties hereto. Nothing in
23 this Order shall preclude any party from seeking judicial relief, upon notice to the
24 other parties, with regard to any provision hereof.

25 25. The Court may modify the terms and conditions of the Order for good
26 cause, or in the interest of justice, or on its own order at any time in these
27 proceedings.

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26. Without a separate court order, the Order is not intended to change, amend, or circumvent any court rule or local rule.

IT IS SO ORDERED.

Dated: January 11, 2017

By: 
Hon. Jean P. Rosenbluth
United States Magistrate Judge

1 **EXHIBIT A TO PROTECTIVE ORDER**
2 **UNITED STATES DISTRICT COURT**
3 **CENTRAL DISTRICT OF CALIFORNIA**

4 KAROLINE V. SMITH, *et al.*,

5 Plaintiffs,

6 v.

7 AMERICAN GENERAL LIFE
8 INSURANCE COMPANY;
9 *et al.*,

10 Defendants.

Case No. 5:16-cv-01893-JLS(JPRx)

**[PROPOSED] AGREED
PROTECTIVE ORDER**

Understanding Pursuant to the Agreed
Protective Order

11
12 I have read the Agreed Protective Order entered in this case. I agree and
13 understand that: (a) all Confidential Discovery Material disclosed to me in this case
14 is pursuant to and subject to the terms of this Order and may not be disclosed or
15 used other than pursuant to the terms thereof, and (b) that the violation of the terms
16 of the Order (by use of the Confidential Discovery Material in any impermissible
17 manner) may subject me to punishment for contempt of a court order.

18 I agree to be bound by the Order, and I consent to the jurisdiction of the
19 above-captioned Court for purposes of the enforcement of the Order.

20 Executed this ____ day of _____ [month], _____ [year],
21 in _____ [city], _____ [state].

22
23 Signature: _____

24 Please print or type the following:

25 Name: _____

26 Title and Affiliation: _____

27 Address: _____

28 Telephone: _____