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

ANDY HOANG,

Plaintiff,

vs.

BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA,

Defendant.

) Case No. 5:17-cv-00175 SJO (SPx)

**STIPULATED PROTECTIVE  
ORDER**

1. A. PURPOSES AND LIMITATIONS

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

B. GOOD CAUSE STATEMENT

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

1 reasonable necessary uses of such material in preparation for and in the conduct of trial,  
2 to address their handling at the end of the litigation, and serve the ends of justice, a  
3 protective order for such information is justified in this matter. It is the intent of the  
4 parties that information will not be designated without a good faith belief that it has  
5 been maintained in a confidential, non-public manner, and there is good cause why it  
6 should not be part of the public record of this case.

7 **2. DEFINITIONS**

8 2.1 Action: the above captioned pending federal lawsuit.

9 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
10 of information or items under this Order.

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

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
16 support staff).

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

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

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

27 2.8 House Counsel: attorneys who are employees of a party to this Action.  
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or  
3 other legal entity not named as a Party to this Action.

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

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

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
12 Discovery Material in this Action.

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

17 2.14 Protected Material: any Disclosure or Discovery Material that is  
18 designated as “CONFIDENTIAL.”

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
20 from a Producing Party.

21 3. SCOPE

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

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

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

9     5.     DESIGNATING PROTECTED MATERIAL

10           5.1    Exercise of Restraint and Care in Designating Material for Protection.

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

18           Mass, indiscriminate, or routinized designations are prohibited. Designations that  
19 are shown to be clearly unjustified or that have been made for an improper purpose  
20 (e.g., to unnecessarily encumber or retard the case development process or to impose  
21 unnecessary expenses and burdens on other parties) expose the Designating Party to  
22 sanctions.

23           If it comes to a Designating Party’s attention that information or items that it  
24 designated for protection do not qualify for protection that Designating Party must  
25 promptly notify all other Parties that it is withdrawing the inapplicable designation.

26           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
27 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated  
28 or ordered, Disclosure or Discovery Material that qualifies for protection under this

1 Order must be clearly so designated before the material is disclosed or produced.

2 Designation in conformity with this Order requires:

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

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

20 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
21 that the Designating Party identify on the record, before the close of the deposition,  
22 hearing, or other proceeding, all protected testimony.

23 (c) for information produced in some form other than documentary and for  
24 any other tangible items, that the Producing Party affix in a prominent place on the  
25 exterior of the container or containers in which the information or item is stored the  
26 legend “CONFIDENTIAL.” If only a portion or portions of the information or item  
27 warrant protection, the Producing Party, to the extent practicable, shall identify the  
28 protected portion(s).

1           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive the  
3 Designating Party’s right to secure protection under this Order for such material. Upon  
4 timely correction of a designation, the Receiving Party must make reasonable efforts to  
5 assure that the material is treated in accordance with the provisions of this Order.

6           6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7           6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
8 designation of confidentiality at any time that is consistent with the Court’s Scheduling  
9 Order.

10          6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
11 resolution process under Local Rule 37.1 et seq.

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

19          7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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

12           (d) the court and its personnel;

13           (e) court reporters and their staff;

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

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

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

28           (i) any mediator or settlement officer, and their supporting personnel,



1 mutually agreed upon by any of the parties engaged in settlement discussions.

2 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
3 OTHER LITIGATION

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

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

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

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

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

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

25 (a) The terms of this Order are applicable to information produced by a Non-  
26 Party in this Action and designated as “CONFIDENTIAL.” Such information produced  
27 by Non-Parties in connection with this litigation is protected by the remedies and relief  
28 provided by this Order. Nothing in these provisions should be construed as prohibiting

1 a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to  
3 produce a Non-Party's confidential information in its possession, and the Party is  
4 subject to an agreement with the Non-Party not to produce the Non-Party's confidential  
5 information, then the Party shall:

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

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

12 (3) make the information requested available for inspection by the Non-  
13 Party; if requested.

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

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
24 Protected Material to any person or in any circumstance not authorized under this  
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
26 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
27 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
28 whom unauthorized disclosures were made of all the terms of this Order, and (d) request

1 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”  
2 that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
4 PROTECTED MATERIAL

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

15 12. MISCELLANEOUS

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
17 person to seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
19 Protective Order no Party waives any right it otherwise would have to object to  
20 disclosing or producing any information or item on any ground not addressed in this  
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any  
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
25 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
26 Protected Material at issue. If a Party’s request to file Protected Material under seal is  
27 denied by the court, then the Receiving Party may file the information in the public  
28 record unless otherwise instructed by the court.

1     13.   FINAL DISPOSITION

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

19  
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   IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

24  
25   DATED: April 20, 2017                               /s/ Glenn Kantor  
26    Attorney for Plaintiff

27  
28   DATED: April 20, 2017                               /s/ Alexandra Drury

Attorney for Defendant

*Filer's Attestation: Pursuant to Local Rule 5-4.3.4(a)(2)(i), Alexandra Drury hereby attests that concurrence in the filing of this document and its contents was obtained from all signatories listed.*

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: April 25, 2017



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United States Magistrate Judge

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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 that I  
5 have read in its entirety and understand the Stipulated Protective Order that was issued  
6 by the United States District Court for the Central District of California on [date] in the  
7 case of *Andy Hoang v. Berkshire Life Insurance Company of America*, case number  
8 5:17-cv-00175. I agree to comply with and to be bound by all the terms of this Stipulated  
9 Protective Order and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
11 that I will not disclose in any manner any information or item that is subject to this  
12 Stipulated Protective Order to any person or entity except in strict compliance with the  
13 provisions of this Order.

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

21  
22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
3 COUNTY OF SAN FRANCISCO )

4  
5 I am employed in the County of San Francisco, State of California. I am over  
6 the age of 21 and am not a party to the action. My business address is Maynard,  
7 Cooper & Gale, LLP, 600 Montgomery Street, Suite 2600, San Francisco, CA  
8 94111. On the date indicated below I served the foregoing documents described as:

9 **STIPULATED PROTECTIVE ORDER**

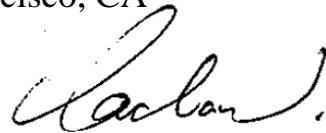
10 [x] By CM/ECF ELECTRONIC SERVICE: The following are registered  
11 CM/ECF users with the Court, and have consented to service through the  
12 Court’s automatic transmission of notice of electronic filing.

13 Glenn R. Kantor (SBN 122643) gkantor@kantorlaw.net  
14 Alan E. Kassan (SBN 113864) akassan@kantorlaw.net  
15 Mitchell Owen Hefter (SBN 291985) mhefter@kantorlaw.net  
16 KANTOR & KANTOR, LLP

17 Attorneys for Plaintiff Andy Hoang

18  
19 I declare under penalty of perjury under the laws of the United States of  
20 America that the foregoing is true and correct to the best of my knowledge.

21 Executed on April 20, 2017, at San Francisco, CA

22  
23 

24 \_\_\_\_\_  
25 Claudia Wu