

1 12.3, below, that this Stipulated Protective Order does not entitle them to file
2 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
3 that must be followed and the standards that will be applied when a party seeks
4 permission from the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve valuable commercial information, financial, or
7 proprietary information for which special protection from public disclosure and from
8 use for any purpose other than prosecution of this action is warranted. Such
9 confidential and proprietary materials and information consist of, among other
10 things, private financial information of third parties, confidential and proprietary
11 statistical information, information regarding confidential business practices,
12 procedures, and training, confidential business or financial information, or other
13 confidential research, development, or commercial information (including
14 information implicating privacy rights of third parties), information otherwise
15 generally unavailable to the public, or which may be privileged or otherwise
16 protected from disclosure under state or federal statutes, court rules, case decisions,
17 or common law. Accordingly, to expedite the flow of information, to facilitate the
18 prompt resolution of disputes over confidentiality of discovery materials, to
19 adequately protect information the parties are entitled to keep confidential, to ensure
20 that the parties are permitted reasonable necessary uses of such material in
21 preparation for and in the conduct of trial, to address their handling at the end of the
22 litigation, and serve the ends of justice, a protective order for such information is
23 justified in this matter. It is the intent of the parties that information will not be
24 designated as confidential for tactical reasons and that nothing be so designated
25 without a good faith belief that it has been maintained in a confidential, non-public
26 manner, and there is good cause why it should not be part of the public record of this
27 case.

28

1 **2. DEFINITIONS**

2 2.1 Action: *Bowlin v. Prudential Insurance Company of America*, Case No.
3 8:16-cv-00937-JLS-PLA.

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation
5 of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
9 Good Cause Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
11 their support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.6 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 or
18 generated in disclosures or responses to discovery in this matter.

19 2.7 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.

22 2.8 House Counsel: attorneys who are employees of a party to this Action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.9 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27 2.10 Outside Counsel of Record: attorneys who are not employees of a party
28 to this Action but are retained to represent or advise a party to this Action and have

1 appeared in this Action on behalf of that party or are affiliated with a law firm that
2 has appeared on behalf of that party, including support staff.

3 2.11 Party: any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and their
5 support staffs).

6 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.13 Professional Vendors: persons or entities that provide litigation support
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or
10 demonstrations, and organizing, storing, or retrieving data in any form or medium)
11 and their employees and subcontractors.

12 2.14 Protected Material: any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
15 from a Producing Party.

16 **3. SCOPE**

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

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

24 **4. DURATION**

25 Once a case proceeds to trial, all of the court-filed information to be
26 introduced that was previously designated as confidential or maintained pursuant to
27 this protective order becomes public and will be presumptively available to all
28 members of the public, including the press, unless compelling reasons supported by

1 specific factual findings to proceed otherwise are made to the trial judge in advance
2 of the trial. See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81
3 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
4 produced in discovery from “compelling reasons” standard when merits-related
5 documents are part of court record). Accordingly, the terms of this protective order
6 do not extend beyond the commencement of the trial. Any party seeking to file
7 documents or information designated as CONFIDENTIAL under this Order in
8 connection with the ERISA Court trial in this matter shall comply with Local Rule
9 79-5.2.2(b).

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 unjustifiably
18 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.

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise

1 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
2 under this Order must be clearly so designated before the material is disclosed or
3 produced.

4 Designation in conformity with this Order requires:

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

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

24 (b) for testimony given in depositions that the Designating Party
25 identify the Disclosure or Discovery Material on the record, before the close of the
26 deposition. When it is impractical to identify separately each portion of testimony
27 that is entitled to protection, and when it appears that substantial portions of the
28 testimony may qualify for protection, the Party or non-party that sponsors, offers, or

1 gives the testimony may invoke on the record (before the deposition or proceeding is
2 concluded) a right to have up to 20 days after receipt of transcripts from the court
3 reporter to identify the specific portions of the testimony as to which protection is
4 sought.

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

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

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly
23 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

24 6.3 Burden. The burden of persuasion in any such challenge proceeding
25 shall be on the Designating Party. Frivolous challenges, and those made for an
26 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
27 other parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

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, as
20 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) of
23 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 whom
25 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;

28 (e) court reporters and their staff;

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

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

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

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

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
18 **PRODUCED IN OTHER LITIGATION**

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

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

24 (b) promptly notify in writing the party who caused the subpoena or
25 order to issue in the other litigation that some or all of the material covered by the
26 subpoena or order is subject to this Protective Order. Such notification shall include a
27 copy of this Stipulated Protective Order; and
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1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected. If the
3 Designating Party timely seeks a protective order, the Party served with the subpoena
4 or court order shall not produce any information designated in this action as
5 “CONFIDENTIAL” before a determination by the court from which the subpoena or
6 order issued, unless the Party has obtained the Designating Party’s permission. The
7 Designating Party shall bear the burden and expense of seeking protection in that
8 court of its confidential material and nothing in these provisions should be construed
9 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
10 directive from another court.

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

13 (a) The terms of this Order are applicable to information produced by a
14 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
15 produced by Non-Parties in connection with this litigation is protected by the
16 remedies and relief provided by this Order. Nothing in these provisions should be
17 construed as 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-
23 Party 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 Stipulated
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably
27 specific description of the information requested; and
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1 (3) make the information requested available for inspection by
2 the Non-Party, if requested.

3 (c) If the Non-Party fails to seek a protective order from this Court
4 within 14 days of receiving the notice and accompanying information, the Receiving
5 Party may produce the Non-Party’s confidential information responsive to the
6 discovery request. If the Non-Party timely seeks a protective order, the Receiving
7 Party shall not produce any information in its possession or control that is subject to
8 the confidentiality agreement with the Non-Party before a determination by the
9 Court. 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 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
15 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
16 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
17 persons to whom unauthorized disclosures were made of all the terms of this Order,
18 and (d) request such person or persons to execute the “Acknowledgment and
19 Agreement to Be Bound” that is attached hereto as Exhibit A.

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

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

1 information covered by the attorney-client privilege or work product protection, the
2 parties may incorporate their agreement in the stipulated protective order submitted
3 to the Court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order, no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in this
10 Stipulated Protective Order. Similarly, no Party waives any right to object on any
11 ground to use in evidence of any of the material covered by this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
14 only be filed under seal pursuant to a court order authorizing the sealing of the
15 specific Protected Material at issue; good cause must be shown in the request to file
16 under seal. If a Party’s request to file Protected Material under seal is denied by the
17 Court, then the Receiving Party may file the information in the public record unless
18 otherwise instructed by the Court.

19 **13. FINAL DISPOSITION**

20 After the final disposition of this Action, within 60 days of a written request
21 by the Designating Party, each Receiving Party must return all Protected Material to
22 the Producing Party or destroy such material. As used in this subdivision, “all
23 Protected Material” includes all copies, abstracts, compilations, summaries, and any
24 other format reproducing or capturing any of the Protected Material. Whether the
25 Protected Material is returned or destroyed, the Receiving Party must submit a
26 written certification to the Producing Party (and, if not the same person or entity, to
27 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
28 appropriate) all the Protected Material that was returned or destroyed and (2) affirms

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

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

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

6 Dated: February 22, 2017

Robert J. McKennon
Joseph S. McMillen
David S. Rankin
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By: /s/ David S. Rankin
David S. Rankin
Attorneys for Plaintiff
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12 Dated: February 22, 2017

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By: /s/ Jason A. James
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Attorneys for Defendant
THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA

20 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

Paul L. Abrams

22 DATED: February 27, 2017

Paul L. Abrams
United States Magistrate Judge

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of *Bowlin v. The Prudential Insurance Company of America, et
al.*, Case No. 8:16-cv-00937 JLS (PLAx). I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

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

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____