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19
 20 UNITED STATES DISTRICT COURT
 21 CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION
 22

23 USHA M. RAJAN,
 24 Plaintiff,
 25 v.
 26 AMERICAN GENERAL LIFE
 27 INSURANCE COMPANY; and DOES 1
 to 10, inclusive,
 28 Defendants.

Case No. 8:17-cv-02050-JVS-KES
STIPULATED PROTECTIVE ORDER
 Complaint Filed: November 22, 2017
 Discovery Document: Referred to
 Magistrate Judge Karen E. Scott

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this Action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this Action may be
5 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the
6 following Stipulated Protective Order. The parties acknowledge that this Order does not
7 confer blanket protections on all disclosures or responses to discovery and that the
8 protection it affords from public disclosure and use extends only to the limited information
9 or items that are entitled to confidential treatment under the applicable legal principles.
10 The parties further acknowledge, as set forth in Section 13.3 below, that this Stipulated
11 Protective Order does not entitle them to file confidential information under seal; Civil
12 Local Rule 79-5 sets forth the procedures that must be followed and the standards that will
13 be applied when a party seeks permission from the court to file material under seal.
14

15 2. GOOD CAUSE STATEMENT

16 This Action is likely to involve defendant American General’s trade secrets,
17 proprietary information, and other valuable research, development, commercial, financial,
18 or technical information, including but not limited to insurance claims handling manuals,
19 procedures, and policies, as well as to proprietary formulas, benefit computations,
20 procedures, and other policies and practices used to calculate and quantify the amount of
21 benefits payable pursuant to policies of insurance, for which special protection from public
22 disclosure and from use for any purpose other than prosecution of this Action is warranted.

23 Accordingly, to expedite the flow of information, to prevent unnecessary court-
24 involvement, to facilitate the prompt resolution of disputes over confidentiality of
25 discovery materials, to adequately protect information the parties are entitled to keep
26 confidential, to ensure that the parties are permitted reasonable necessary uses of such
27 material in preparation for and in the conduct of trial in this Action, to address their
28

1 handling at the end of this Action, and serve the ends of justice, a protective order for such
2 information is justified in this Action.

3 It is the intent of the parties that information will not be designated as confidential
4 for tactical reasons, and that nothing be so 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 in this Action.

7
8 3. DEFINITIONS

9 3.1 Action: *Usha M. Rajan v. American General Life Insurance Company et al.*,
10 Case No. 8:17-cv-02050-JVS-KES, in the United States District Court for the Central
11 District of California, Southern Division.

12 3.2 Authorized Individual: a person enumerated in Sections 8.2(a)–(h), below.

13 3.3 Challenging Party: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 3.4 “CONFIDENTIAL” Information or Items: information (regardless of how it
16 is generated, stored, or maintained) or tangible things that qualify for protection under
17 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
18 Statement.

19 3.5 Counsel: Outside Counsel of Record and In-House Counsel (as well as their
20 support staff).

21 3.6 Designating Party: a Party or Non-Party that designates information or items
22 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 3.7 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among other
25 things, testimony, transcripts, and tangible things), that are produced or generated in
26 disclosures or responses to discovery in this Action.

27 3.8 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to this action who has been retained by a Party or its counsel to serve as an expert

1 witness or as a consultant in this Action.

2 3.9 House Counsel: attorneys who are employees of a Party to this Action.
3 House Counsel does not include Outside Counsel of Record or any other outside counsel.

4 3.10 Non-Party: any natural person, partnership, corporation, association, or other
5 legal entity not named as a Party to this Action.

6 3.11 Outside Counsel of Record: attorneys who are not employees of a Party to
7 this Action but are retained to represent or advise a Party to this Action and have appeared
8 in this Action on behalf of that Party or are affiliated with a law firm which has appeared
9 on behalf of that Party (and includes support staff).

10 3.12 Party: any Party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their support
12 staffs).

13 3.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
14 Material in this Action.

15 3.14 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,
17 and organizing, storing, or retrieving data in any form or medium) and their employees and
18 subcontractors.

19 3.15 Protected Material: any Disclosure or Discovery Material that is designated
20 as "CONFIDENTIAL."

21 3.16 Receiving Party: a Party that receives Disclosure or Discovery Material from
22 a Producing Party.

23
24 4. SCOPE

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

1 that might reveal Protected Material. However, the protections conferred by this
2 Stipulation and Order do not cover the following information: (a) any information that is in
3 the public domain at the time of disclosure to a Receiving Party or becomes part of the
4 public domain after its disclosure to a Receiving Party as a result of publication not
5 involving a violation of this Order, including becoming part of the public record through
6 trial or otherwise; and (b) any information known to the Receiving Party prior to the
7 disclosure or obtained by the Receiving Party after the disclosure from a source who
8 obtained the information lawfully and under no obligation of confidentiality to the
9 Designating Party.

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

12
13 5. DURATION

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

21
22 6. DESIGNATING PROTECTED MATERIAL

23 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each
24 Party or Non-Party that designates information or items for protection under this Order
25 must take care to limit any such designation to specific material that qualifies under the
26 appropriate standards. The Designating Party must designate for protection only those
27 parts of material, documents, items, or oral or written communications that qualify so that
28 other portions of the material, documents, items, or communications for which protection

1 is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

9 6.2 Manner and Timing of Designations. Except as otherwise provided in this
10 Order (see, e.g., second paragraph of Section 6.2(a) below), or as otherwise stipulated or
11 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
12 must be clearly so designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 that the Producing Party affix, at a minimum, the legend "CONFIDENTIAL" (hereinafter
17 "CONFIDENTIAL legend") to each page that contains Protected Material. If only a
18 portion or portions of the material on a page qualifies for protection, the Producing Party
19 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
20 the margins).

21 A Party or Non-Party that makes original documents available for inspection need
22 not designate them for protection until after the inspecting Party has indicated which
23 material it would like copied and produced. During the inspection and before the
24 designation, all material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
26 copied and produced, the Producing Party must determine which documents, or portions
27 thereof, qualify for protection under this Order. Then, before producing the specified
28 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page

1 that contains Protected Material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

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

7 A Party shall give advance notice if they expect a deposition or other pretrial or trial
8 proceeding to include Protected Material so that the other parties can ensure that only
9 Authorized Individuals are present at those proceedings when such material is disclosed or
10 used. The use of a document as an exhibit at a deposition shall not in any way affect its
11 designation. Transcripts containing Protected Material shall have the “CONFIDENTIAL
12 legend” on the title page noting the presence of Protected Material, and the title page shall
13 be followed by a list of all pages (including line numbers as appropriate) that have been
14 designated. The Designating Party shall inform the court reporter of these requirements.

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

20 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
21 to designate qualified information or items does not, standing alone, waive the Designating
22 Party’s right to secure protection under this Order for such material. Upon timely
23 correction of a designation, the Receiving Party must make reasonable efforts to assure that
24 the material is treated in accordance with the provisions of this Order.

25
26 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

27 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
28 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

1 7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process under Local Rule 37.1 *et seq.*

3 7.3 Burden of Persuasion. The burden of persuasion in any such challenge
4 proceeding shall be on the Designating Party. Frivolous challenges, and those made for an
5 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating Party has
7 waived the confidentiality designation, all parties shall continue to afford the material in
8 question the level of protection to which it is entitled under the Producing Party's
9 designation until the Court rules on the challenge.

10
11 8. ACCESS TO AND USE OF PROTECTED MATERIAL

12 8.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this Action
14 only for prosecuting, defending, or attempting to settle this Action. Such Protected
15 Material may be disclosed only to the categories of persons and under the conditions
16 described in this Order. When the Action has been terminated, a Receiving Party must
17 comply with the provisions of Section 14 below (FINAL DISPOSITION).

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

21 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
22 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
23 may disclose any information or item designated "CONFIDENTIAL" only to:

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

27 (b) the officers, directors, and employees (including House Counsel) of the
28 Receiving Party to whom disclosure is reasonably 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 and Agreement to Be Bound” (Exhibit A);

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 and who have signed
8 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

20
21 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
22 OTHER LITIGATION

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

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

28 (b) promptly notify in writing the party who caused the subpoena or order

1 to issue in the other litigation that some or all of the material covered by the subpoena or
2 order is subject to this Protective Order. Such notification shall include a copy of this
3 Stipulated Protective Order; and

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

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

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

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

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

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

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

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

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

14
15 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24
25 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain inadvertently
28 produced material is subject to a claim of privilege or other protection, the obligations of

1 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
2 This provision is not intended to modify whatever procedure may be established in an e-
3 discovery order that provides for production without prior privilege review. Pursuant to
4 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
5 effect of disclosure of a communication or information covered by the attorney-client
6 privilege or work product protection, the parties may incorporate their agreement in the
7 Stipulated Protective Order submitted to the Court.

8
9 13. MISCELLANEOUS

10 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person
11 to seek its modification by the Court in the future.

12 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
13 Order no Party waives any right it otherwise would have to object to disclosing or
14 producing any information or item on any ground not addressed in this Stipulated
15 Protective Order. Similarly, no Party waives any right to object on any ground to use in
16 evidence of any of the material covered by this Protective Order.

17 13.3 Filing Protected Material. A Party that seeks to file under seal any Protected
18 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
19 under seal pursuant to a court order authorizing the sealing of the specific Protected
20 Material at issue. If a Party's request to file Protected Material under seal is denied by the
21 Court, then the Receiving Party may file the information in the public record unless
22 otherwise instructed by the Court.

23
24 14. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in Section 5 (DURATION),
26 within sixty (60) days of a written request by the Designating Party, each Receiving Party
27 must return all Protected Material to the Producing Party or destroy such material. As used
28 in this Section (FINAL DISPOSITION), "all Protected Material" includes all copies,

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

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

3
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6
7 Dated: May 29, 2018

McDOWELL HETHERINGTON LLP

8 By: /s/ Jodi K. Swick

9 Jodi K. Swick

Alec S. DiMario

10
11 Attorneys for Defendant
12 AMERICAN GENERAL LIFE INSURANCE
COMPANY

13
14 Dated: May 29, 2018

McKENNON LAW GROUP PC

15 By: /s/ Stephanie L. Talavera (w/permission)

16 Robert J. McKennon

17 Scott E. Calvert

Stephanie L. Talavera

18 Attorneys for Plaintiff
19 USHA M. RAJAN

20
21
22
23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24
25 Dated: May 31, 2018

By: 

26 The HONORABLE KAREN E. SCOTT
27 United States Magistrate Judge
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under
6 penalty of perjury that I have read in its entirety and understand the Stipulated Protective
7 Order that was issued by the United States District Court for the Central District of
8 California on _____ [date] in the case of *Usha M. Rajan v. American General Life*
9 *Insurance Company et al.*, Case No. 8:17-cv-02050-JVS-KES. I agree to comply with
10 and to be bound by all the terms of this Stipulated Protective Order, and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment in the
12 nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person or
14 entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 Action.

19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and telephone
21 number] as my California agent for service of process in connection with this Action or
22 any proceedings related to enforcement of this Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____