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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA,

Plaintiff,

vs.

ANTONIO MONTALVO,

Defendant.

ANTONIO MONTALVO,

Counter-Claimant,

vs.

BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA,

Counter-Defendant.

Case No. 1:16-cv-00006-SAB

**STIPULATED  
CONFIDENTIALITY  
AGREEMENT AND  
PROTECTIVE ORDER**

1 Plaintiff and Counter-Defendant Berkshire Life Insurance Company of  
2 America (“Berkshire”) and Defendant and Counter-Claimant Antonio Montalvo  
3 (“Montalvo”), by and through their respective counsel, hereby agree as follows:

4 **1. INTRODUCTION**

5 1.1 PURPOSES AND LIMITATIONS.

6 Disclosure and discovery activity in this action are likely to involve production  
7 of confidential, proprietary, or private information for which special protection from  
8 public disclosure and from use for any purpose other than prosecuting this litigation  
9 may be warranted. Accordingly, the parties hereby stipulate to and petition the court  
10 to enter the following Stipulated Protective Order. The parties acknowledge that this  
11 Order does not confer blanket protections on all disclosures or responses to discovery  
12 and that the protection it affords from public disclosure and use extends only to the  
13 limited information or items that are entitled to confidential treatment under the  
14 applicable legal principles. The parties further acknowledge, as set forth in  
15 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
16 confidential information under seal; Local Rule 141 sets forth the procedures that  
17 must be followed when a party seeks permission from the court to file material under  
18 seal.

19 1.2 GOOD CAUSE STATEMENT.

20 This action is likely to involve confidential medical information, confidential  
21 and/or private information of third parties, trade secrets and other valuable research,  
22 development, commercial, financial, technical and/or proprietary information for  
23 which special protection from public disclosure and from use for any purpose other  
24 than prosecution of this action is warranted. Such confidential and/or proprietary  
25 materials and information consist of, among other things, confidential medical  
26 records, confidential business or financial information, information regarding  
27 confidential business practices, or other confidential research, development, or  
28 commercial information (including information implicating privacy rights of third

1 parties), information otherwise generally unavailable to the public, or which may be  
2 privileged or otherwise protected from disclosure under state or federal statutes,  
3 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
4 information, to facilitate the prompt resolution of disputes over confidentiality of  
5 discovery materials, to adequately protect information the parties are entitled to keep  
6 confidential, to ensure that the parties are permitted reasonable necessary uses of  
7 such material in preparation for and in the conduct of trial, to address their handling  
8 at the end of the litigation, and serve the ends of justice, a protective order for such  
9 information is justified in this matter. It is the intent of the parties that information  
10 will not be designated as confidential for tactical reasons and that nothing be so  
11 designated without a good faith belief that it has been maintained in a confidential,  
12 non-public manner, and there is good cause why it should not be part of the public  
13 record of this case. The parties believe the need for protection should be addressed  
14 by a court order, as opposed to a private agreement between the parties, to facilitate  
15 the orderly and efficient discovery of relevant information while minimizing the  
16 potential for unauthorized disclosure or use of confidential and/or proprietary  
17 materials and information. Moreover, the parties would like the ability to request  
18 that the Court rule on challenges to a party's confidentiality designation, should any  
19 challenges arise that the parties are unable to resolve by meeting and conferring.

## 20 **2. DEFINITIONS**

21 2.1 Challenging Party: a Party or Non-Party that challenges the designation  
22 of information or items under this Order.

23 2.2 "CONFIDENTIAL" Information or Items: information (regardless of  
24 how it is generated, stored or maintained) or tangible things that qualify for  
25 protection under standards developed under Rule 26 of the Federal Rule of Civil  
26 Procedure.

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1           2.3   “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”

2 Information or Items: extremely sensitive “CONFIDENTIAL” Information or Items  
3 whose disclosure to another Party or Non-Party would create a substantial risk of  
4 serious injury that could not be avoided by less restrictive means.

5           2.4   Counsel (without qualifier): Outside Counsel of Record and House  
6 Counsel (as well as their support staff).

7           2.5   Designating Party: a Party or Non-Party that designates information or  
8 items that it produces in disclosures or in responses to discovery as  
9 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
10 ONLY.”

11          2.6   Disclosure or Discovery Material: all items or information, regardless  
12 of the medium or manner in which it is generated, stored, or maintained (including,  
13 among other things, testimony, transcripts, and/or tangible things), that are produced  
14 or generated in disclosures or responses to discovery in this matter.

15          2.7   Expert: a person with specialized knowledge or experience in a matter  
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
17 an expert witness or as a consultant in this action and who is not a past or a current  
18 employee or of a competitor of a Party’s and who, at the time of retention, is not  
19 anticipated to become an employee of a Party or a competitor of a Party’s.

20          2.8   House Counsel: attorneys, including those for Berkshire or its parent  
21 companies, affiliates, predecessors, successors, assignees, subsidiaries, directors,  
22 officers, employees, representatives, and all other entities or persons acting on behalf  
23 of Berkshire (hereinafter “Berkshire Entity Related Parties”), who are employees of a  
24 party to this action. House Counsel does not include Outside Counsel of Record or  
25 any other outside counsel.

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

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1        2.10 Outside Counsel of Record: attorneys who are not employees of a party  
2 to this action but are retained to represent or advise a party to this action and have  
3 appeared in this action on behalf of that party or are affiliated with a law firm which  
4 has appeared on behalf of that party.

5        2.11 Party: any party to this action, and/or any Berkshire Entity Related  
6 Parties, including all of its officers, directors, employees, consultants, retained  
7 experts, and Outside Counsel of Record (and their support staffs).

8        2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this action.

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

14       2.14 Protected Material: any Disclosure or Discovery Material that is  
15 designated as “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL —  
16 ATTORNEYS’ EYES ONLY.”

17       2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
18 from a Producing Party.

19 **3. SCOPE**

20       The protections conferred by this Stipulation and Order cover not only  
21 Protected Material (as defined above), but also (1) any information copied or  
22 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
23 compilations of Protected Material; and (3) any testimony, conversations, or  
24 presentations by Parties or their Counsel that might reveal Protected Material.  
25 Pursuant to Local Rule 141.(b)(2), any use of Protected Material at trial shall be  
26 governed by a separate agreement or order.

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

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,  
17 items, or communications for which protection is not warranted are not swept  
18 unjustifiably 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 or retard the case development process or to  
22 impose unnecessary expenses and burdens on other parties) expose the Designating  
23 Party to sanctions as permitted under applicable court rules, statutes, and case law.

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 mistaken 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 the legend “CONFIDENTIAL” or  
8 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY” 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) and must specify,  
12 for each portion, the level of protection being asserted (either “CONFIDENTIAL” or  
13 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”).

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

1 (b) for testimony given in deposition or in other pretrial or trial  
2 proceedings, that the Designating Party identify on the record, before the close of the  
3 deposition, hearing, or other proceeding, all protected testimony. When it is  
4 impractical to identify separately each portion of testimony that is entitled to  
5 protection, and when it appears that substantial portions of the testimony may qualify  
6 for protection, the Party or Non-Party that sponsors, offers, or gives the testimony  
7 may invoke on the record (before the deposition or proceeding is concluded) a right  
8 to have up to 21 days after receipt of official (non-rough) transcripts from the court  
9 reporter to identify the specific portions of the testimony as to which protection is  
10 sought and to specify the level of protection being asserted (“CONFIDENTIAL” or  
11 “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”). Only those  
12 portions of the testimony that are appropriately designated for protection within the  
13 21 days shall be covered by the provisions of this Stipulated Protective Order.

14 Transcript pages containing Protected Material must be separately  
15 bound by the court reporter, who must affix to the top of each such page the legend  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
17 ONLY,” as instructed by the Party or Non-Party offering or sponsoring the witness  
18 or presenting the testimony.

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
27 failure to designate qualified information or items does not, standing alone, waive the  
28 Designating Party’s right to secure protection under this Order for such material.



1 Upon timely correction of a designation, the Receiving Party must make reasonable  
2 efforts to assure that the material is treated in accordance with the provisions of this  
3 Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
6 designation of confidentiality at any time. Unless a prompt challenge to a  
7 Designating Party's confidentiality designation is necessary to avoid foreseeable,  
8 substantial unfairness, unnecessary economic burdens, or a significant disruption or  
9 delay of the litigation, a Party does not waive its right to challenge a confidentiality  
10 designation by electing not to mount a challenge promptly after the original  
11 designation is disclosed.

12 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
13 resolution process by providing written notice of each designation it is challenging  
14 and describing the basis for each challenge. To avoid ambiguity as to whether a  
15 challenge has been made, the written notice must recite that the challenge to  
16 confidentiality is being made in accordance with this specific paragraph of the  
17 Protective Order. The parties shall attempt to resolve each challenge in good faith  
18 and must begin the process by conferring directly (in voice to voice dialogue; other  
19 forms of communication are not sufficient) within 14 days of the date of service of  
20 notice. In conferring, the Challenging Party must explain the basis for its belief that  
21 the confidentiality designation was not proper and must give the Designating Party  
22 an opportunity to review the designated material, to reconsider the circumstances,  
23 and, if no change in designation is offered, to explain the basis for the chosen  
24 designation. A Challenging Party may proceed to the next stage of the challenge  
25 process only if it has engaged in this meet and confer process first or establishes that  
26 the Designating Party is unwilling to participate in the meet and confer process in a  
27 timely manner.

1           6.3   Judicial Intervention. If the Parties cannot resolve a challenge without  
2 court intervention, the Designating Party shall file and serve a motion to retain  
3 confidentiality under Local Rules 141.1 and 251 within 30 days of the parties  
4 agreeing that the meet and confer process will not resolve their dispute. Each such  
5 motion must be accompanied by a competent declaration affirming that the movant  
6 has complied with the meet and confer requirements imposed in the preceding  
7 paragraph. Failure by the Designating Party to make such a motion including the  
8 required declaration within 30 days shall automatically waive the confidentiality  
9 designation for each challenged designation. In addition, the Challenging Party may  
10 file a motion challenging a confidentiality designation at any time if there is good  
11 cause for doing so, including a challenge to the designation of a deposition transcript  
12 or any portions thereof. Any motion brought pursuant to this provision must be  
13 accompanied by a competent declaration affirming that the movant has complied  
14 with the meet and confer requirements imposed by the preceding paragraph.

15           The burden of persuasion in any such challenge proceeding shall be on the  
16 Designating Party. Frivolous challenges, and those made for an improper purpose  
17 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
18 expose the Challenging Party to sanctions as permitted under applicable court rules,  
19 statutes, and case law. Unless the Designating Party has waived the confidentiality  
20 designation by failing to file a motion to retain confidentiality as described above, all  
21 parties shall continue to afford the material in question the level of protection to  
22 which it is entitled under the Producing Party's designation until the court rules on  
23 the challenge.

## 24   7.    ACCESS TO AND USE OF PROTECTED MATERIAL

25           7.1   Basic Principles. A Receiving Party may use Protected Material that is  
26 disclosed or produced by another Party or by a Non-Party in connection with this  
27 case only for prosecuting, defending, or attempting to settle this litigation. Such  
28 Protected Material may be disclosed only to the categories of persons and under the

1 conditions described in this Order. When the litigation has been terminated, a  
2 Receiving Party must comply with the provisions of section 13 below (FINAL  
3 DISPOSITION).

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

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
8 otherwise ordered by the court or permitted in writing by the Designating Party, a  
9 Receiving Party may disclose any information or item designated  
10 “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
12 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
13 disclose the information for this litigation and who have signed the  
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

15 (b) the officers, directors, and employees (including House Counsel) of the  
16 Receiving Party to whom disclosure is reasonably necessary for this litigation and  
17 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff, professional jury or trial consultants, mock  
23 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
24 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
25 (Exhibit A);

26 (f) during their depositions, witnesses in the action to whom disclosure is  
27 reasonably necessary and who have signed the “Acknowledgment and Agreement to  
28 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered

1 by the court. Pages of transcribed deposition testimony or exhibits to depositions  
2 that reveal Protected Material must be separately bound by the court reporter and  
3 may not be disclosed to anyone except as permitted under this Stipulated Protective  
4 Order. If an issue arises and a specific witness refuses to sign Exhibit A, the parties  
5 agree they will meet and confer and attempt to resolve the issue.

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

8 7.3 Disclosure of “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
9 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
10 writing by the Designating Party, a Receiving Party may disclose any information or  
11 item designated “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES ONLY”  
12 only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well  
14 as employees of said Outside Counsel of Record to whom it is reasonably necessary  
15 to disclose the information for this litigation and who have signed the  
16 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

17 (b) House Counsel of a Receiving Party to whom disclosure is reasonably  
18 necessary for this litigation and who have signed the “Acknowledgment and  
19 Agreement to Be Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) to whom disclosure is reasonably  
21 necessary for this litigation and who have signed the “Acknowledgment and  
22 Agreement to Be Bound” (Exhibit A);

23 (d) the Court and its personnel;

24 (e) court reporters, their staffs, and Professional Vendors to whom  
25 disclosure is reasonably necessary for this litigation and who have signed the  
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

27 (f) the author of the document or the original source of the information.

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

3 If a Party is served with a subpoena or a court order issued in other litigation  
4 that compels disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’ EYES  
6 ONLY”, 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  
11 or order is subject to this Protective Order. Such notification shall include a copy of  
12 this 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  
16 the subpoena or court order shall not produce any information designated in this  
17 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL — ATTORNEYS’  
18 EYES ONLY” before a determination by the court from which the subpoena or order  
19 issued, unless the Party has obtained the Designating Party’s permission. The  
20 Designating Party shall bear the burden and expense of seeking protection in that  
21 court of its confidential material – and nothing in these provisions should be  
22 construed as authorizing or encouraging a Receiving Party in this action to disobey a  
23 lawful directive from another court.

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

26 (a) The terms of this Order are applicable to information produced by a Non-  
27 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
28 CONFIDENTIAL — ATTORNEYS’ EYES ONLY.” Such information produced

1 by Non-Parties in connection with this litigation is protected by the remedies and  
2 relief provided by this Order. Nothing in these provisions should be construed as  
3 prohibiting a Non-Party from seeking additional protections.

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

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

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

14 (3) make the information requested available for inspection by the Non-  
15 Party.

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

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

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
26 Protected Material to any person or in any circumstance not authorized under this  
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
2 persons to whom unauthorized disclosures were made of all the terms of this Order,  
3 and (d) request such person or persons to execute the “Acknowledgment and  
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
6 **PROTECTED MATERIAL**

7 Any inadvertent disclosure or production of materials subject to the work  
8 product doctrine, attorney-client privilege, or any other applicable privilege or  
9 protection shall not constitute or be deemed a waiver of any such privilege or  
10 protection, provided that the Producing Party shall notify the Receiving Party in  
11 writing of such protection or privilege promptly after the Producing Party discovers  
12 such materials have been inadvertently produced. A Party who receives any  
13 inadvertently disclosed information may not use or disclose such information in this  
14 or in any other proceeding, or to any third party. When a Producing Party gives  
15 notice to Receiving Parties that certain inadvertently produced material is subject to a  
16 claim of privilege or other protection, the obligations of the Receiving Parties include  
17 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal  
18 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the  
19 effect of disclosure of a communication or information covered by the attorney-client  
20 privilege or work product protection, the parties may incorporate their agreement in  
21 the stipulated protective order submitted to the court.

22 **12. MISCELLANEOUS**

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
24 person to seek its modification by the court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
26 Protective Order no Party waives any right it otherwise would have to object to  
27 disclosing or producing any information or item on any ground not addressed in this  
28

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the  
4 Designating Party or a court order secured after appropriate notice to all interested  
5 persons, a Party may not file in the public record in this action any Protected  
6 Material, and/or any information contained in or derived from any Protected  
7 Material. A Party that seeks to file under seal any Protected Material and/or any  
8 information contained in or derived from any Protected Material must comply with  
9 Local Rule 141 and any other applicable law that governs the filing of documents  
10 under seal with the District Court.

11 **13. FINAL DISPOSITION**

12 Within 60 days after the final disposition of this action, as defined in  
13 paragraph 4, each Receiving Party must return all Protected Material to the  
14 Producing Party or destroy such material. As used in this subdivision, “all Protected  
15 Material” includes all copies, abstracts, compilations, summaries, and any other  
16 format reproducing or capturing any of the Protected Material. Whether the  
17 Protected Material is returned or destroyed, the Receiving Party must submit a  
18 written certification to the Producing Party (and, if not the same person or entity, to  
19 the Designating Party) by the 60 day deadline that (1) identifies (by category, where  
20 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
21 that the Receiving Party has not retained any copies, abstracts, compilations,  
22 summaries or any other format reproducing or capturing any of the Protected  
23 Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
24 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
25 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
26 work product, and consultant and expert work product, even if such materials contain  
27 Protected Material. Any such archival copies that contain or constitute Protected  
28



1 Material remain subject to this Protective Order as set forth in Section 4  
2 (DURATION).

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

4 Dated: August 26, 2016

MESERVE, MUMPER & HUGHES LLP  
Linda M. Lawson  
Allison Vana

6  
7 By: /s/ Allison Vana  
Allison Vana  
Attorneys for Plaintiff and Counter-  
8 Defendant  
9 BERKSHIRE LIFE INSURANCE  
COMPANY OF AMERICA

10  
11 Dated: August 26, 2016

WANGER JONES HELSLEY PC  
Scott D. Laird  
Jena M. Harlos

14  
15 By: /s/ Scott D. Laird  
Scott D. Laird  
Attorneys for Defendant and  
16 Counter-Claimant  
17 ANTONIO MONTALVO

18 **Filer's Attestation-Local Rule 131(e)**

19 The filing attorney attests that she has obtained concurrence regarding the  
20 filing of this document and its content from the signatories to this document.  
21

22 **ORDER**

23  
24 Pursuant to the stipulation of the parties, IT IS HEREBY  
25 ORDERED that:

- 26 1. The protective order is approved and entered;  
27 2. The parties are advised that pursuant to the Local Rules of  
28 the United States District Court, Eastern District of California, any

1 documents which are to be filed under seal will require a written  
2 request which complies with Local Rule 141; and

3 3. The party making a request to file documents under seal  
4 shall be required to show good cause for documents attached to a  
5 nondispositive motion or compelling reasons for documents attached to  
6 a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d 665,  
7 677-78 (9th Cir. 2009).

8  
9 IT IS SO ORDERED.

10 Dated: August 29, 2016

  
UNITED STATES MAGISTRATE JUDGE

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4 **EXHIBIT A**

5 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

6 I, \_\_\_\_\_ [print or type full name], of  
7 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
8 that I have received a copy of, read in its entirety, and understand the Stipulated  
9 Protective Order that was issued by the United States District Court for the Eastern  
10 District of California in the case of *Berkshire Life Insurance Company of America v.*  
11 *Antonio Montalvo*, Case No. 1:16-cv-00006-SAB. I agree to comply with and to be  
12 bound by all the terms of this Stipulated Protective Order and I understand and  
13 acknowledge that failure to so comply could expose me to sanctions and punishment  
14 in the nature of contempt. I solemnly promise that I will not disclose in any manner  
15 any information or item that is subject to this Stipulated Protective Order to any  
16 person or entity except in strict compliance with the provisions of this Order, and that  
17 subject to the terms of the Stipulated Protective Order, I will use such information  
18 that is disclosed to me only for purposes of this case.

19 I further agree to submit to the jurisdiction of the United States District Court  
20 for the Eastern District of California for the purpose of enforcing the terms of this  
21 Stipulated Protective Order, even if such enforcement proceedings occur after  
22 termination of this action.

23 I hereby appoint \_\_\_\_\_ [print or type full name] of  
24 \_\_\_\_\_ [print or type full address and telephone  
25 number] as my California agent for service of process in connection with this action  
26 or any proceedings related to enforcement of this Stipulated Protective Order.

27 Date: \_\_\_\_\_

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

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Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_