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 THE LINCOLN NATIONAL  
 7 LIFE INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA

10 MAO XIONG and FRAYDA BURTON, as	)	Case No. 2:08-cv-00345-WBS-JFM
Guardian ad litem for MARIYLN L. XIONG	)	
11 and ARIEL N. XIONG,	)	<b>STIPULATED PROTECTIVE ORDER</b>
	)	
12 Plaintiffs,	)	
	)	
13 v.	)	
	)	
14 THE LINCOLN NATIONAL LIFE	)	
INSURANCE COMPANY,	)	
	)	
15 Defendant.	)	
16	)	

17  
 18 IT IS HEREBY STIPULATED by and between Plaintiffs Mao Xiong and Frayda A.  
 19 Burton ("Plaintiffs") and Defendant The Lincoln National Life Insurance Company  
 20 ("Defendant"), through their respective attorneys of record, that, pursuant to Section 9 of this  
 21 Court's Final Pretrial Order filed July 2, 2009 ("Final Pretrial Order"), a Protective Order may be  
 22 entered by this Court as follows:

23 **1. PURPOSES AND LIMITATIONS**

24 Plaintiff and Defendant acknowledge that the Court, by section 9 of its Final Pretrial  
 25 Order, directed Defendant to produce to Plaintiff by July 29, 2009, a copy of Defendant's  
 26 underwriting manual in effect for the period January 1, 2007, to February 27, 2007  
 27 ("Underwriting Manual"). Plaintiffs and Defendant further acknowledge that the Underwriting  
 28 Manual contains confidential and/or proprietary information for which special protection from

1 public dissemination or disclosure and from use for any purpose other than prosecuting and  
2 defending this matter is warranted. Plaintiffs and Defendant further acknowledge that the  
3 Underwriting Manual is and shall continue to be treated as "CONFIDENTIAL" information as  
4 set forth below.

5 **2. DEFINITIONS**

6 **2.1 Parties.** "Parties" as used in the Order (Singularly "Party") shall mean  
7 and refer to Plaintiffs Mao Xiong and Frayda A. Burton, Defendant Lincoln National Life  
8 Insurance Company, and third parties from whom protectible information and/or documents are  
9 obtained through discovery or otherwise. This Order shall apply to any Party and/or their  
10 officers, directors, employees, consultants, retained experts, and outside counsel (and their  
11 support staff).

12 **2.2 "CONFIDENTIAL" Information or Items.** Information (regardless of  
13 how generated, stored or maintained) or tangible things that constitute private records, trade  
14 secrets or other confidential research, development, commercial or other information.

15 **2.3 Receiving Party.** A Party that receives Protected Material from a  
16 Producing Party.

17 **2.4 Producing Party.** A Party that produces CONFIDENTIAL information.

18 **2.5 Protected Material.** Any documents or data designated as  
19 "CONFIDENTIAL", including but not limited to the Underwriting Manual.

20 **2.6 Outside Counsel.** Attorneys who are not employees of a Party but who  
21 are retained to represent or advise a Party in this action.

22 **2.7 Professional Vendors.** Persons or entities that provide litigation support  
23 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;  
24 organizing, storing, retrieving data in any form or medium; etc.), and their employees and  
25 subcontractors.

26 **3. SCOPE**

27 The protections conferred by this Stipulated Protective Order cover not only Protected  
28 Material (as defined above), but also any information copied or extracted therefrom, including

1 electronically stored information, as well as all copies, excerpts, summaries, or compilations  
2 thereof, plus testimony, conversations, or presentations by parties or counsel to or in this lawsuit  
3 or in other settings that might reveal Protected Material.

4 **4. DURATION**

5 Even after the termination of this lawsuit, the confidentiality obligations imposed  
6 by this Order shall remain in effect until a Designating Party agrees otherwise in writing.

7 **5. ACCESS TO AND USE OF PROTECTED MATERIAL**

8 **5.1 Basic Principles.** A Receiving Party may only use Protected Material that  
9 is disclosed or produced by another Party in connection with this case only for prosecuting and  
10 defending this litigation. Such Protected Material may be disclosed only to the Court and to the  
11 categories of persons described in this Stipulated Protective Order. When the lawsuit has been  
12 concluded, a Receiving Party shall comply with the provisions of Paragraph 9 herein.

13 **5.2 "CONFIDENTIAL" Information May Be Disclosed Only to the**  
14 **Following Persons:**

15 (a) Outside Counsel (as defined in Paragraph 2.6), and all independent  
16 companies or agencies that are directly engaged by Outside Counsel to perform  
17 litigation support services, paralegal assistants, stenographic, clerical or other staff  
18 working under the supervision of such counsel whose duties and responsibilities  
19 require access to the CONFIDENTIAL Information.

20 (b) Independent experts, independent non-expert witnesses, or  
21 independent consultants of the Receiving Party who are not employed by the  
22 Receiving Party and who have been expressly retained or sought to be retained by  
23 Outside Counsel to assist in preparation of this action for hearing, with disclosure  
24 only to the extent necessary to perform such work.

25 (c) Plaintiffs and Defendant, and the employees, officers, directors and  
26 board members of each of them.

27 (d) Any other person by written agreement of the Designating Party  
28 and only after execution of Exhibit A hereto by that person.

1 (e) The Judge in this proceeding and the Judge's law clerk or other  
2 staff working under the Judge's supervision.

3 **5.4 Duty to Maintain "Protected Material" Securely.** Protected Material  
4 must be stored and maintained by a Receiving Party in a secure manner that ensures that access  
5 is limited to the persons authorized under this Order. Nothing in this Protective Order shall be  
6 deemed to restrict in any way any Producing Party with respect to the use of its own Protected  
7 Material.

8 **6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
9 **IN OTHER LITIGATION**

10 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
11 would compel disclosure of any information or items designated in this action as  
12 "CONFIDENTIAL," the Receiving Party must so notify the Designating Party, in writing (by  
13 fax, if possible) immediately and in no event more than three business days after receiving the  
14 subpoena or order. Such notification must include a copy of the subpoena or court order. The  
15 Receiving Party also must immediately inform in writing the party who caused the subpoena or  
16 order to issue in the other litigation that some or all the material covered by the subpoena or  
17 order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy  
18 of this Stipulated Protective Order promptly to the party in the other action that caused the  
19 subpoena or order to issue.

20 The purpose of imposing these duties is to alert the interested parties to the existence of  
21 this Stipulated Protective Order and to afford the Designating Party in this case an opportunity to  
22 protect its confidentiality interests in the court from which the subpoena or order issued.

23 **7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

1 this Stipulated Protective Order, and (d) request such person or persons to execute the  
2 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

3 **8. FILING PROTECTED MATERIAL UNDER SEAL**

4 A Party that intends to file CONFIDENTIAL documents with the Court must, consistent  
5 with Local Rule 39-141, first seek and obtain an order from the Court allowing such documents  
6 to be filed under seal ("Sealing Order"). Once such order is obtained, the person filing such  
7 document(s) shall designate to the Clerk that all or a designated portion of such document(s) is  
8 subject to this Stipulated Protective Order and the Sealing Order and is to be kept under seal. If  
9 the filing Party fails to seek a Sealing Order prior to filing CONFIDENTIAL documents with the  
10 Court, any Party may do so and, at its option, seek sanctions against the filing Party for failure to  
11 comply with this Stipulated Protective Order.

12 **9. FINAL DISPOSITION**

13 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
14 after the final termination of this lawsuit, each Receiving Party must return all Protected Material  
15 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
16 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
17 Protected Material. With permission in writing from the Producing Party, the Receiving Party  
18 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
19 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
20 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
21 deadline that identifies (by category, where appropriate) all the Protected Material that was  
22 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
23 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
24 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
25 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
26 work product, even if such materials contain Protected Material. Any such archival copies that  
27 contain or constitute Protected Material remain subject to this Stipulated Protective Order.

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1           **10.    MISCELLANEOUS**

2                   **10.1    Right to Further Relief.** Nothing in this Stipulated Protective Order  
3 abridges the right of any person to seek modification of this Order in the future. Each Party  
4 expressly acknowledges that such modifications may be necessary.

5                   **10.2    Enforcement.** Each Party and person bound by this Stipulated Protective  
6 Order agrees that the Judge who has been assigned to handle this matter has jurisdiction to  
7 enforce the terms of this Stipulated Protective Order, and that such jurisdiction continues beyond  
8 the date this matter is concluded.

9                   **10.3    Right to Assert Other Objections.**

10                   Entry of this Stipulated Protective Order, and Producing or receiving materials or  
11 otherwise complying with the terms of this Stipulated Protective Order shall not:

12                   **(a)**    Operate as an admission by any party that any particular Protected  
13 Material contains or reflects trade secrets, proprietary or commercially sensitive  
14 information, or other confidential matter; or

15                   **(b)**    Prejudice in any way the rights of any party to object to the production of  
16 documents it considers not subject to discovery; or

17                   **(c)**    Prejudice in any way the rights of any party to object to the authenticity or  
18 admissibility into evidence of any document, testimony or evidence subject to this  
19 Protective Order; or

20                   **(d)**    Prejudice in any way the rights of a party to seek determination by this  
21 Court:

22                           **(i)**    whether particular Protected Material should be produced; or

23                           **(ii)**   if produced, whether such Protected Material should be subject to  
24 the terms of this Stipulated Protective Order; or

25                   **(e)**    Prejudice in any way the rights of a party to apply to this Court for a  
26 further protective order relating to any CONFIDENTIAL information; or

27                   **(f)**    Prevent the parties to this Stipulated Protective Order from agreeing in  
28 writing to alter or waive the provisions or protections provided for herein with respect to



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, of \_\_\_\_\_ have read in its entirety and understand the Stipulated Protective Order in the lawsuit of *Mai Xiong, et al. v. The Lincoln National Life Insurance Company*, Case No. 2:08-CV-00345-WBS-JFM. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order. 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. If I am not a party to this dispute, I agree that the presiding District Court Judge or Magistrate Judge may enforce this agreement at any time, including following the conclusion of this matter, and that an action may be brought in the United States District Court for the Eastern District of California, Sacramento Division, to enforce the terms of this Stipulated Protective Order, and I submit to the jurisdiction of both.

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

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

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

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