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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Kyle MIHOLICH,
Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

SENIOR LIFE INSURANCE COMPANY,

Defendant.

No. 3:21-cv-01123-WQH-AGS

**ORDER GRANTING JOINT
MOTION (ECF 32) AND
STIPULATED PROTECTIVE
ORDER**

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The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial or sensitive information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

DEFINITIONS

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1. The term "confidential information" will mean and include information contained or disclosed in any materials, including documents, portions of documents, answers to interrogatories, responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial testimony and depositions, including data, summaries, and compilations derived therefrom that is deemed to be confidential information by any party to which it belongs.

1 research, development, financial or other commercial information.

2 5. In the event the producing party elects to produce materials for inspection, no
3 marking need be made by the producing party in advance of the initial inspection. For
4 purposes of the initial inspection, all materials produced will be considered as
5 "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated as such pursuant to the
6 terms of this Order. Thereafter, upon selection of specified materials for copying by the
7 inspecting party, the producing party must, within a reasonable time prior to producing
8 those materials to the inspecting party, mark the copies of those materials that contain
9 confidential information with the appropriate confidentiality marking.

10 6. Whenever a deposition taken on behalf of any party involves a disclosure of
11 confidential information of any party:

12 a. the deposition or portions of the deposition must be designated as
13 containing confidential information subject to the provisions of this
14 Order; such designation must be made on the record whenever possible,
15 but a party may designate portions of depositions as containing
16 confidential information after transcription of the proceedings; [A]
17 party will have until fourteen (14) days after receipt of the deposition
18 transcript to inform the other party or parties to the action of the
19 portions of the transcript to be designated "CONFIDENTIAL" or
20 "CONFIDENTIAL - FOR COUNSEL ONLY."

21 b. the disclosing party will have the right to exclude from attendance at
22 the deposition, during such time as the confidential information is to be
23 disclosed, any person other than the deponent, counsel (including their
24 staff and associates), the court reporter, and the person(s) agreed upon
25 pursuant to paragraph 8 below; and

26 c. the originals of the deposition transcripts and all copies of the
27 deposition must bear the legend "CONFIDENTIAL" or
28 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate, and the

1 original or any copy ultimately presented to a court for filing must not
2 be filed unless it can be accomplished under seal, identified as being
3 subject to this Order, and protected from being opened except by order
4 of this Court.

5 7. All confidential information designated as "CONFIDENTIAL" or
6 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving party
7 to anyone other than those persons designated within this order and must be handled in the
8 manner set forth below and, in any event, must not be used for any purpose other than in
9 connection with this litigation, unless and until such designation is removed either by
10 agreement of the parties, or by order of the Court.

11 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY" must
12 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by
13 independent experts under the conditions set forth in this Paragraph. The right of any
14 independent expert to receive any confidential information will be subject to the advance
15 approval of such expert by the producing party or by permission of the Court. The party
16 seeking approval of an independent expert must provide the producing party with the name
17 and curriculum vitae of the proposed independent expert, and an executed copy of the form
18 attached hereto as Exhibit A, in advance of providing any confidential information of the
19 producing party to the expert. Any objection by the producing party to an independent
20 expert receiving confidential information must be made in writing within fourteen (14)
21 days following receipt of the identification of the proposed expert. Confidential
22 information may be disclosed to an independent expert if the fourteen (14) day period has
23 passed and no objection has been made. The approval of independent experts must not be
24 unreasonably withheld.

25 9. Information designated "confidential" must be viewed only by counsel (as
26 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the
27 terms of paragraph 8), by court personnel, and by the additional individuals listed below,
28 provided each such individual has read this Order in advance of disclosure and has agreed

1 in writing to be bound by its terms:

- 2 a) Party executives and employees in decision-making positions and who
3 are required to participate in policy decisions with reference to this
4 action;
- 5 b) Technical personnel of the parties with whom Counsel for the parties
6 find it necessary to consult, in the discretion of such counsel, in
7 preparation for trial of this action; and
- 8 c) Stenographic and clerical employees associated with the individuals
9 identified above.

10 10. With respect to material designated "CONFIDENTIAL" or
11 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of the
12 document to be its originator, author or a recipient of a copy of the document, may be
13 shown the same.

14 11. All information which has been designated as "CONFIDENTIAL" or
15 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party, and
16 any and all reproductions of that information, must be retained in the custody of the counsel
17 for the receiving party identified in paragraph 3, except that independent experts authorized
18 to view such information under the terms of this Order may retain custody of copies such
19 as are necessary for their participation in this litigation.

20 12. Before any materials produced in discovery, answers to interrogatories,
21 responses to requests for admissions, deposition transcripts, or other documents which are
22 designated as confidential information are filed with the Court for any purpose, the party
23 seeking to file such material must seek permission of the Court to file the material under
24 seal.

25 13. At any stage of these proceedings, any party may object to a designation of
26 the materials as confidential information. The party objecting to confidentiality must
27 notify, in writing, counsel for the designating party of the objected-to materials and the
28 grounds for the objection. If the dispute is not resolved consensually between the parties

1 within seven (7) days of receipt of such a notice of objections, the objecting party may
2 move the Court for a ruling on the objection. The materials at issue must be treated as
3 confidential information, as designated by the designating party, until the Court has ruled
4 on the objection or the matter has been otherwise resolved.

5 14. All confidential information must be held in confidence by those inspecting
6 or receiving it and must be used only for purposes of this action. Counsel for each party,
7 and each person receiving confidential information must take reasonable precautions to
8 prevent the unauthorized or inadvertent disclosure of such information. If confidential
9 information is disclosed to any person other than a person authorized by this Order, the
10 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
11 relating to the unauthorized disclosure to the attention of the other parties and, without
12 prejudice to any rights and remedies of the other parties, make every effort to prevent
13 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

14 15. No party will be responsible to another party for disclosure of confidential
15 information under this Order if the information in question is not labeled or otherwise
16 identified as such in accordance with this Order.

17 16. If a party, through inadvertence, produces any confidential information
18 without labeling or marking or otherwise designating it as such in accordance with this
19 Order, the designating party may give written notice to the receiving party that the
20 document or thing produced is deemed confidential information, and that the document or
21 thing produced should be treated as such in accordance with that designation under this
22 Order. The receiving party must treat the materials as confidential, once the designating
23 party so notifies the receiving party. If the receiving party has disclosed the materials before
24 receiving the designation, the receiving party must notify the designating party in writing
25 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
26 of labeling or marking the inadvertently produced materials as "CONFIDENTIAL" or
27 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE ORDER.

28 17. Nothing within this order will prejudice the right of any party to object to the

1 production of any discovery material on the grounds that the material is protected as
2 privileged or as attorney work product.

3 18. Nothing in this Order will bar counsel from rendering advice to their clients
4 with respect to this litigation and, in the course thereof, relying upon any information
5 designated as confidential information, provided that the contents of the information must
6 not be disclosed in a manner inconsistent with this Order.

7 19. This Order will be without prejudice to the right of any party to oppose
8 production of any information for lack of relevance or any other ground other than the mere
9 presence of confidential information. The existence of this Order must not be used by either
10 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
11 Procedure.

12 20. Nothing within this Order will be construed to prevent disclosure of
13 confidential information if such disclosure is required by law or by order of the Court.

14 21. Upon final termination of this action, including any and all appeals, counsel
15 for each party must, upon request of the producing party, return all confidential information
16 to the party that produced the information, including any copies, excerpts, and summaries
17 of that information, or must destroy same at the option of the receiving party, and must
18 purge all such information from all machine-readable media on which it resides.
19 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
20 memoranda, motions, and other documents filed with the Court that refer to or incorporate
21 confidential information and will continue to be bound by this Order with respect to all
22 such retained information. Further, attorney work product materials that contain
23 confidential information need not be destroyed, but, if they are not destroyed, the person
24 in possession of the attorney work product will continue to be bound by this Order with
25 respect to all such retained information.

26 22. The restrictions and obligations set forth within this Order will not apply to
27 any information that: (a) the parties agree should not be designated confidential
28 information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the

1 parties agree, or the Court rules, has become public knowledge other than as a result of
2 disclosure by the receiving party, its employees, or its agents in violation of this Order; or
3 (d) has come or will come into the receiving party's legitimate knowledge independently
4 of the production by the designating party. Prior knowledge must be established by pre-
5 production documentation.

6 23. The restrictions and obligations within this order will not be deemed to
7 prohibit discussions of any confidential information with anyone if that person already has
8 or obtains legitimate possession of that information.

9 24. Transmission by email or some other currently utilized method of
10 transmission is acceptable for all notification purposes within this Order.

11 25. This Order may be modified by agreement of the parties, subject to approval
12 by the Court.

13 26. The Court may modify the terms and conditions of this Order for good cause,
14 or in the interest of justice, or on its own order at any time in these proceedings.

15 Dated: May 24, 2022

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18 Hon. Andrew G. Schopler
19 United States Magistrate Judge
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EXHIBIT A

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury that
6 I have read in its entirety and understand the Stipulated Protective Order that was issued
7 by the United States District Court for the Southern District of California in the case of
8 *Miholich v. Senior Life Insurance Company*, Case No. 3:21-cv-01123-WQH-AGS. I agree
9 to comply with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

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

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

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22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____
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