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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

In re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare

CASE NO. 8:19-CV-02075-JVS-DFM
Assigned to Judge James V. Selna

Consolidated with:
8:19-cv-02082 8:19-cv-02083
8:19-cv-02084 8:19-cv-02085
8:19-cv-02086 8:19-cv-02087
8:19-cv-02088 8:19-cv-02372
8:20-cv-00136 8:20-cv-00137
8:20-cv-00138 8:20-cv-00340
8:20-cv-00341 8:20-cv-00356

**ORDER GRANTING AMENDED
PROTECTIVE ORDER**
[Discovery document referred to
Magistrate Judge Douglas F.
McCormick]

FAC Filed: Mar. 19, 2020
Band 1 Bellwether Trial: Sept. 14, 2021

1 Pursuant to Rule 26(c) and 45 C.F.R. § 164.512(e)(1), good cause appearing
2 therefore, and at the request and stipulation of the parties to the consolidated action
3 *In re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare*,
4 Case No. 8:19-CV-02075-JVS-DFM, IT IS HEREBY ORDERED:

5 1. Good Cause Statement. This case involves allegations by Plaintiffs
6 that Defendants engaged in unfair, unreasonable, illegal, incomplete and systematic
7 polices, practices and decisions regarding the mental health and substance use
8 disorder treatment services that Plaintiffs rendered to Defendants' insureds. The
9 parties agree that discovery in this action is likely to involve the disclosure of
10 protected health information ("PHI") under the Health Insurance Portability and
11 Accountability Act of 1996 ("HIPAA"), including Substance Abuse Information
12 under 42 C.F.R. Part 2, by reference to other publicly available information, or
13 through verification of such identification by another person ("Protected Substance
14 Abuse Information"), as well as information that may not constitute PHI or
15 Substance Abuse Information but is nonetheless confidential, proprietary, trade
16 secret, sensitive, or private.

17 2. In this Stipulation and Protective Order, the words set forth below
18 shall have the following meanings:

- 19 a) "Proceeding" means the above-entitled proceeding, *In re: Out of*
20 *Network Substance Use Disorder Claims Against*
21 *UnitedHealthcare*, Case No. 8:19-cv-02075-JVS(DFM)
- 22 b) "Court" means the Hon. James V. Selna, or any other judge to
23 which this Proceeding may be assigned, including Court staff
24 participating in such proceedings.
- 25 c) "Confidential" means information (regardless of how it is
26 generated, stored or maintained) or tangible things the party
27 designating or producing it reasonably believes contains or
28 reflects information subject to protection, including without

1 limitation: (1) information protected under the federal Health
2 Insurance Portability and Accountability Act and the California
3 Medical Information Act, (2) information in the nature of a trade
4 secret or other research, investigation, development, commercial
5 or operational information of a confidential or proprietary nature;
6 (3) financial, marketing, planning, strategic, investigative, or other
7 internal information, data, analyses, or specifications of a
8 proprietary, confidential or competitive nature; (4) information
9 deemed confidential or non-public by any regulatory body; (5)
10 information otherwise protected by law from disclosure; and/or
11 (6) any other information with respect to which there is a
12 compelling need for confidentiality. Documents designated as
13 “Confidential” shall be limited to documents that have not been
14 made public, which the disclosing party in good faith believes
15 will, if disclosed, have the effect of causing harm to its business
16 or competitive position; or in the case of individuals, shall be
17 limited to documents that reveal personal information, such as
18 contact information, social security numbers, or Protected Health
19 Information (as defined in 45 CFR §§ 160.103 and 164.501).

- 20 d) “Confidential Materials” means any Documents, Testimony or
21 Information as defined below designated as “Confidential”
22 pursuant to the provisions of this Stipulation and Protective Order.
- 23 e) “Designating Party” means the Party that designates Materials as
24 “Confidential.”
- 25 f) “Disclose” or “Disclosed” or “Disclosure” means to reveal,
26 divulge, give, or make available Materials, or any part thereof, or
27 any information contained therein.
- 28 g) “Documents” means (i) any “Writing,” “Original,” and

1 “Duplicate” as those terms are defined by California Evidence
2 Code Sections 250, 255, and 260, which have been produced in
3 discovery in this Proceeding by any person, and (ii) any copies,
4 reproductions, or summaries of all or any part of the foregoing.

5 h) “Highly Confidential – Attorneys’ Eyes Only” means information
6 (regardless of how it is generated, stored or maintained) or
7 tangible things the party designating or producing it reasonably
8 believes contains or reflects information subject to protection,
9 including without limitation: highly confidential personal or
10 commercial information, such as trade secrets, financial
11 information, business strategy, or other information, disclosure of
12 which would be especially detrimental or harmful to the
13 Disclosing Party or its business.

14 i) “Information” means the content of Documents or Testimony.

15 j) “Testimony” means all depositions, declarations or other
16 testimony taken or used in this Proceeding.

17 3. The Designating Party shall have the right to designate as
18 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” any Documents,
19 Testimony or Information that the Designating Party in good faith believes to
20 contain non-public information that is entitled to confidential treatment under
21 applicable law.

22 4. The entry of this Stipulation and Protective Order does not alter,
23 waive, modify, or abridge any right, privilege or protection otherwise available to
24 any Party with respect to the discovery of matters, including but not limited to any
25 Party’s right to assert the attorney-client privilege, the attorney work product
26 doctrine, or other privileges, or any Party’s right to contest any such assertion.

27 5. Protected Health Information:

28 a) All parties and counsel in this action (including all plaintiffs’

1 counsel, regardless of the particular individual(s) they represent)
2 are authorized to receive, subpoena, and transmit protected health
3 information to the extent and subject to the conditions set forth
4 herein.

- 5 b) All "covered entities," as defined in 45 C.F.R. § 160.103, are
6 authorized to disclose protected health information in this action
7 to the extent and subject to the conditions set forth herein.
- 8 c) Nothing in this Order authorizes counsel to obtain medical
9 records or protected health information through means other than
10 formal discovery requests, subpoenas, depositions, patient
11 authorizations, or other lawful processes.
- 12 d) This Order does not control or limit the use of protected health
13 information that comes into possession of any party or any party's
14 counsel from source other than a covered entity as defined in 45
15 C.F.R. § 160.103.

16 6. Any Documents, Testimony or Information to be designated as
17 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" must be clearly so
18 designated before the Document, Testimony or Information is Disclosed or
19 produced. The parties may agree that the case name and number are to be part of
20 the "Confidential" or "Highly Confidential – Attorneys' Eyes Only" designation.
21 The "Confidential" or "Highly Confidential – Attorneys' Eyes Only" designation
22 should not obscure or interfere with the legibility of the designated Information.

- 23 a) For Documents (apart from transcripts of depositions or other
24 pretrial or trial proceedings), the Designating Party must affix the
25 legend "Confidential" or "Highly Confidential – Attorneys' Eyes
26 Only" on each page of any Document containing such designated
27 Confidential Material.
- 28 b) For Testimony given in depositions the Designating Party may

1 either:

- 2 i. identify on the record, before the close of the deposition, all
3 “Confidential” or “Highly Confidential – Attorneys’ Eyes
4 Only” Testimony, by specifying all portions of the Testimony
5 that qualify as “Confidential” or “Highly Confidential –
6 Attorneys’ Eyes Only;” or
- 7 ii. designate the entirety of the Testimony at the deposition as
8 “Confidential” or “Highly Confidential – Attorneys’ Eyes
9 Only” (before the deposition is concluded), so long as within
10 30 days following receipt of the deposition transcript the
11 Designating Party identifies specific portions of the Testimony
12 as to which protection is sought. If the Designating Party fails
13 to identify specific portions of the Testimony within such time,
14 the Testimony will not be considered “Confidential” or
15 “Highly Confidential – Attorneys’ Eyes Only.”
- 16 iii. In circumstances where portions of the deposition Testimony
17 are designated for protection, the transcript pages containing
18 “Confidential” Information may be separately bound by the
19 court reporter, who must affix to the top of each page the
20 legend “Confidential,” as instructed by the Designating Party.
- 21 c) For Information produced in some form other than Documents,
22 and for any other tangible items, including, without limitation,
23 compact discs or DVDs, the Designating Party must affix in a
24 prominent place on the exterior of the container or containers in
25 which the Information or item is stored the legend “Confidential.”
26 If only portions of the Information or item warrant protection, the
27 Designating Party, to the extent practicable, shall identify the
28 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”

1 portions.

2 7. The inadvertent production by any of the undersigned Parties or non-
3 Parties to the Proceedings of any Document, Testimony or Information during
4 discovery in this Proceeding without a “Confidential” or “Highly Confidential –
5 Attorneys’ Eyes Only” designation, shall be without prejudice to any claim that
6 such item is “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” and
7 such Party shall not be held to have waived any rights by such inadvertent
8 production. In the event that any Document, Testimony or Information that is
9 subject to a “Confidential” designation is inadvertently produced without such
10 designation, the Party that inadvertently produced the document shall give written
11 notice of such inadvertent production, together with a further copy of the subject
12 Document, Testimony or Information designated as “Confidential” or “Highly
13 Confidential – Attorneys’ Eyes Only”(the “Inadvertent Production Notice”). Upon
14 receipt of such Inadvertent Production Notice, the Party that received the
15 inadvertently produced Document, Testimony or Information shall promptly
16 destroy the inadvertently produced Document, Testimony or Information and all
17 copies thereof, or, at the expense of the producing Party, return such together with
18 all copies of such Document, Testimony or Information to counsel for the
19 producing Party and shall retain only the “Confidential” or “Highly Confidential –
20 Attorneys’ Eyes Only” designated Materials. Should the receiving Party choose to
21 destroy such inadvertently produced Document, Testimony or Information, the
22 receiving Party shall notify the producing Party in writing of such destruction
23 within ten (10) days of receipt of written notice of the inadvertent production. This
24 provision is not intended to apply to any inadvertent production of any Information
25 protected by attorney-client or work product privileges.

26 8. In the event that counsel for a Party receiving Documents, Testimony
27 or Information in discovery designated as “Confidential” or “Highly Confidential –
28 Attorneys’ Eyes Only” objects to such designation with respect to any or all of such

1 items, said counsel shall advise counsel for the Designating Party, in writing, of
2 such objections, the specific Documents, Testimony or Information to which each
3 objection pertains, and the specific reasons and support for such objections (the
4 “Designation Objections”). Counsel for the Designating Party shall have thirty (30)
5 days from receipt of the written Designation Objections to either (a) agree in
6 writing to de-designate Documents, Testimony or Information pursuant to any or all
7 of the Designation Objections and/or (b) file a motion with the Court seeking to
8 uphold any or all designations on Documents, Testimony or Information addressed
9 by the Designation Objections (the “Designation Motion”). Pending a resolution of
10 the Designation Motion by the Court, any and all existing designations on the
11 Documents, Testimony or Information at issue in such Motion shall remain in
12 place. The Designating Party shall have the burden on any Designation Motion of
13 establishing the applicability of its “Confidential” or “Highly Confidential –
14 Attorneys’ Eyes Only” designation. In the event that the Designation Objections
15 are neither timely agreed to nor timely addressed in the Designation Motion, then
16 such Documents, Testimony or Information shall be de-designated in accordance
17 with the Designation Objection applicable to such material.

18 9. Access to and/or Disclosure of Confidential Materials designated as
19 “Confidential” shall be permitted only to the following persons:

- 20 a) The Court.
- 21 b) Attorneys of record in the Proceeding and their affiliated
22 attorneys, paralegals, clerical and secretarial staff employed by
23 such attorneys who are actively involved in the Proceedings and
24 are not employees of any Party. In-house counsel to the
25 undersigned Parties and the paralegal, clerical and secretarial staff
26 employed by such counsel. Provided, however, that each non-
27 lawyer given access to Confidential Materials shall be advised
28 that such Materials are being Disclosed pursuant to, and are

1 subject to, the terms of this Stipulation and Protective Order and
2 that they may not be Disclosed other than pursuant to its terms.

3 c) Those officers, directors, partners, members, employees and
4 agents of all non-designating Parties that counsel for such Parties
5 deems necessary to aid counsel in the prosecution and defense of
6 this Proceeding; provided, however, that prior to the Disclosure of
7 Confidential Materials to any such officer, director, partner,
8 member, employee or agent, counsel for the Party making the
9 Disclosure shall deliver a copy of this Stipulation and Protective
10 Order to such person, shall explain that such person is bound to
11 follow the terms of such Order, and shall secure the signature of
12 such person on a statement in the form attached hereto as Exhibit
13 A.

14 d) Court reporters in this Proceeding (whether at depositions,
15 hearings, or any other proceeding).

16 e) Any deposition, trial or hearing witness in the Proceeding who
17 previously has had access to the Confidential Materials, or who is
18 currently or was previously an officer, director, partner, member,
19 employee or agent of an entity that has had access to the
20 Confidential Materials.

21 f) Any deposition or non-trial hearing witness in the Proceeding
22 who previously did not have access to the Confidential Materials;
23 provided, however, that each such witness given access to
24 Confidential Materials shall be advised that such Materials are
25 being Disclosed pursuant to, and are subject to, the terms of this
26 Stipulation and Protective Order and that they may not be
27 Disclosed other than pursuant to its terms.

28 g) Mock jury participants, provided, however, that prior to the

1 Disclosure of Confidential Materials to any such mock jury
2 participant, counsel for the Party making the Disclosure shall
3 deliver a copy of this Stipulation and Protective Order to such
4 person, shall explain that such person is bound to follow the terms
5 of such Order, and shall secure the signature of such person on a
6 statement in the form attached hereto as Exhibit A.

7 h) Outside experts or expert consultants consulted by the
8 undersigned Parties or their counsel in connection with the
9 Proceeding, whether or not retained to testify at any oral hearing;
10 provided, however, that prior to the Disclosure of Confidential
11 Materials to any such expert or expert consultant, counsel for the
12 Party making the Disclosure shall deliver a copy of this
13 Stipulation and Protective Order to such person, shall explain its
14 terms to such person, and shall secure the signature of such person
15 on a statement in the form attached hereto as Exhibit A. It shall
16 be the obligation of counsel, upon learning of any breach or
17 threatened breach of this Stipulation and Protective Order by any
18 such expert or expert consultant, to promptly notify counsel for
19 the Designating Party of such breach or threatened breach.

20 i) Any other person that the Designating Party agrees to in writing.
21 Confidential Information designated as “Highly Confidential -
22 Attorneys’ Eyes Only” (hereinafter “Attorneys’ Eyes Only
23 Material”) shall be disclosed only to the persons listed in
24 subparagraphs 9(a), (d), (g), and (i) above, unless otherwise
25 agreed or ordered.

26 For the purposes of subparagraph 9(b), Attorneys’ Eyes Only Material may not be
27 shown to any member or employee of any law firm or other entity or individual
28 who has been, is currently, or will be in the foreseeable future involved in the

1 negotiation of contracts on behalf of any of the Parties to this Agreement, unless the
2 person authored the document or is identified on the face of the document as a
3 previous recipient. Additionally, for the purposes of subparagraph 9(b), Attorneys'
4 Eyes Only Material may be shown to in-house litigation counsel for the Parties,
5 provided that any in-house litigation counsel to whom Attorneys' Eyes Only
6 Material is shown is not and will not in the foreseeable future be involved in the
7 negotiation of contracts between the Parties, and does not share the documents, or
8 the contents thereof, with any of the Parties' directors, officers, agents, or
9 employees who negotiate contracts between the Parties.

10 Attorneys' Eyes Only Material may be shown to persons under subparagraph
11 9(e) and (f) if the witness is an employee of the party who produced the information
12 designated as "Highly Confidential – Attorneys' Eyes Only", if the witness is
13 identified on the face of the document as a previous recipient, or if the party who
14 produced the information as "Highly Confidential - Attorneys' Eyes Only" consents
15 before such designated information is disclosed to the witness.

16 10. Confidential Materials shall be used by the persons receiving them
17 only for the purposes of preparing for, conducting, participating in the conduct of,
18 and/or prosecuting and/or defending the Proceeding, and not for any business or
19 other purpose whatsoever.

20 11. Any Party to the Proceeding (or other person subject to the terms of
21 this Stipulation and Protective Order) may ask the Court, after appropriate notice to
22 the other Parties to the Proceeding, to modify or grant relief from any provision of
23 this Stipulation and Protective Order.

24 12. Entering into, agreeing to, and/or complying with the terms of this
25 Stipulation and Protective Order shall not:

- 26 a) Operate as an admission by any person that any particular
27 Document, Testimony or Information marked "Confidential" or
28 "Highly Confidential – Attorneys' Eyes Only" contains or reflects

1 trade secrets, proprietary, confidential or competitively sensitive
2 business, commercial, financial or personal information; or

3 b) Prejudice in any way the right of any Party (or any other person
4 subject to the terms of this Stipulation and Protective Order):

5 i. to seek a determination by the Court of whether any particular
6 Confidential Material should be subject to protection as
7 “Confidential” or “Highly Confidential – Attorneys’ Eyes
8 Only” under the terms of this Stipulation and Protective Order;
9 or

10 ii. to seek relief from the Court on appropriate notice to all other
11 Parties to the Proceeding from any provision(s) of this
12 Stipulation and Protective Order, either generally or as to any
13 particular Document, Material or Information.

14 13. Any Party to the Proceeding who has not executed this Stipulation and
15 Protective Order as of the time it is presented to the Court for signature may
16 thereafter become a Party to this Stipulation and Protective Order by its counsel’s
17 signing and dating a copy thereof and filing the same with the Court, and serving
18 copies of such signed and dated copy upon the other Parties to this Stipulation and
19 Protective Order.

20 14. Any Information that may be produced by a non-Party witness in
21 discovery in the Proceeding pursuant to subpoena or otherwise may be designated
22 by such non-Party as “Confidential” or “Highly Confidential – Attorneys’ Eyes
23 Only” under the terms of this Stipulation and Protective Order, and any such
24 designation by a non-Party shall have the same force and effect, and create the same
25 duties and obligations, as if made by one of the undersigned Parties hereto. Any
26 such designation shall also function as consent by such producing Party to the
27 authority of the Court in the Proceeding to resolve and conclusively determine any
28 motion or other application made by any person or Party with respect to such

1 designation, or any other matter otherwise arising under this Stipulation and
2 Protective Order.

3 15. In the event any Confidential Information is or was used in any pretrial
4 or discovery proceeding in this action, it shall not lose its confidentiality through
5 such use. All pleadings, motions, oral discovery, and written discovery in this
6 Action which contain or discuss Confidential Information shall be presented only to
7 persons authorized to receive such Confidential Information under this Protective
8 Order.

9 16. If any person subject to this Stipulation and Protective Order who has
10 custody of any Confidential Materials receives a subpoena or other process
11 (“Subpoena”) from any government or other person or entity demanding production
12 of Confidential Materials, the recipient of the Subpoena shall promptly give notice
13 of the same by electronic mail transmission, followed by either express mail or
14 overnight delivery to counsel of record for the Designating Party, and shall furnish
15 such counsel with a copy of the Subpoena. Upon receipt of this notice, the
16 Designating Party may, in its sole discretion and at its own cost, move to quash or
17 limit the Subpoena, otherwise oppose production of the Confidential Materials,
18 and/or seek to obtain confidential treatment of such Confidential Materials from the
19 subpoenaing person or entity to the fullest extent available under law. The recipient
20 of the Subpoena may not produce any Documents, Testimony or Information
21 pursuant to the Subpoena prior to the date specified for production on the
22 Subpoena.

23 17. Nothing in this Stipulation and Protective Order shall be construed to
24 preclude either Party from asserting in good faith that certain Confidential Materials
25 require additional protection. The Parties shall meet and confer to agree upon the
26 terms of such additional protection.

27 18. If, after execution of this Stipulation and Protective Order, any
28 Confidential Materials submitted by a Designating Party under the terms of this

1 Stipulation and Protective Order is Disclosed by a non-Designating Party to any
2 person other than in the manner authorized by this Stipulation and Protective Order,
3 the non-Designating Party responsible for the Disclosure shall bring all pertinent
4 facts relating to the Disclosure of such Confidential Materials to the immediate
5 attention of the Designating Party.

6 19. This Stipulation and Protective Order is entered into without prejudice
7 to the right of any Party to knowingly waive the applicability of this Stipulation and
8 Protective Order to any Confidential Materials designated by that Party. If the
9 Designating Party uses Confidential Materials in a non-Confidential manner, then
10 the Designating Party shall advise that the designation no longer applies.

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

17 21. This Protective Order shall be considered a Qualified Protective Order
18 complying with 45 C.F.R. § 164.512(e)(1)(v)(A) and (B) and authorizing disclosure
19 of protected health information pursuant to 45 C.F.R. § 164.512(e)(1)(iv)(A).
20 Notwithstanding state or federal law limiting a Producing Party's authority to
21 disclose protected health information, the Producing Party is permitted to release
22 protected health information in its possession in response to a discovery request,
23 provided that such a request otherwise complies with the requirements of the
24 California Code of Civil Procedure. The parties may not use or disclose
25 Confidential Health Information produced in this action for any purpose in any
26 other action. Confidential Health Information shall be subject to all other provisions
27 of this Protective Order.

28 22. The Parties shall meet and confer regarding the procedures for use of

1 Confidential Materials at trial and shall move the Court for entry of an appropriate
2 order.

3 23. In the event additional parties join or are joined in this action, they
4 shall not have access to Confidential Information until the newly joined party has
5 executed and filed with the Court its agreement to be fully bound by this Protective
6 Order.

7 24. Nothing in this Stipulation and Protective Order shall affect the
8 admissibility into evidence of Confidential Materials, or abridge the rights of any
9 person to seek judicial review or to pursue other appropriate judicial action with
10 respect to any ruling made by the Court concerning the issue of the status of
11 Protected Material.

12 25. This Stipulation and Protective Order shall continue to be binding after
13 the conclusion of this Proceeding and all subsequent proceedings arising from this
14 Proceeding, except that a Party may seek the written permission of the Designating
15 Party or may move the Court for relief from the provisions of this Stipulation and
16 Protective Order. To the extent permitted by law, the Court shall retain jurisdiction
17 to enforce, modify, or reconsider this Stipulation and Protective Order, even after
18 the Proceeding is terminated.

19 26. All Confidential or Highly Confidential – Attorneys’ Eyes Only
20 Documents or information, whether or not subject to the provisions of HIPAA,
21 shall be returned or destroyed upon the conclusion of this litigation, either through
22 the settlement of the case, the dismissal of the case, or the entry of a Final Order
23 (i.e., an Order not subject to further appeal). Those Confidential or Highly
24 Confidential – Attorneys’ Eyes Only Documents or information that are subject to
25 HIPAA shall also be returned or destroyed upon the conclusion of this litigation,
26 either through the settlement of the case, the dismissal of the case, or the entry of a
27 Final Order (i.e., an Order not subject to further appeal), as required by 45 C.F.R. §
28 164.512(e)(1)(v).

1 27. After this Stipulation and Protective Order has been signed by counsel
2 for all Parties, it shall be presented to the Court for entry. Counsel agree to be
3 bound by the terms set forth herein with regard to any Confidential Materials that
4 have been produced before the Court signs this Stipulation and Protective Order.

5 28. The Parties and all signatories to the Certification attached hereto as
6 Exhibit A agree to be bound by this Stipulation and Protective Order pending its
7 approval and entry by the Court. In the event that the Court modifies this
8 Stipulation and Protective Order, or in the event that the Court enters a different
9 Protective Order, the Parties agree to be bound by this Stipulation and Protective
10 Order until such time as the Court may enter such a different Order. It is the Parties'
11 intent to be bound by the terms of this Stipulation and Protective Order pending its
12 entry so as to allow for immediate production of Confidential Materials under the
13 terms herein.

14 29. This Protective Order may be amended or modified only by further
15 order of the Court upon written stipulation of the Parties or, if the Parties have a
16 disagreement regarding potential amendment or modification, by application to the
17 Court. The obligations imposed by the Protective Order shall survive the
18 termination of this action.

19 30. This Order is entered pursuant to Federal Rule of Evidence 502(d) and
20 (e). Inadvertent production of materials that the Producing Party later claims in
21 good faith should not have been produced because of a privilege, including but not
22 limited to the attorney-client privilege or work product doctrine ("Inadvertently
23 Produced Privileged Information"), will not by itself constitute a waiver of any
24 applicable privilege. When a Producing Party gives notice to Receiving Parties that
25 certain inadvertently produced material is subject to a claim of privilege or other
26 protection, the obligations of the Receiving Parties are those set forth in this Order
27 and in Federal Rule of Civil Procedure 26(b)(5)(B). Within a reasonable period of
28 time after a Producing Person discovers (or upon receipt of notice from another

1 Party) that it has produced Inadvertently Produced Privileged Information, the
2 Producing Person shall request the return of such Inadvertently Produced Privileged
3 Information by identifying in writing the materials inadvertently produced and the
4 basis for withholding such materials from production. If a Producing Party requests
5 the return of Inadvertently Produced Privileged Information pursuant to this
6 paragraph, the Receiving Party must immediately take all commercially reasonable
7 steps to return or destroy the Inadvertently Produced Privileged Information (and
8 copies thereof) and shall take all commercially reasonable steps to sequester or
9 destroy any work product that incorporates the Inadvertently Produced Privileged
10 Information. If the Receiving Party disputes the privilege claim, it must notify the
11 Producing Person of the dispute and the basis therefore in writing within ten (10)
12 days of receipt of the Producing Person's notification. Other than for an *in camera*
13 review in connection with seeking a determination by the Court, the Receiving
14 Party may not use or disclose any Inadvertently Produced Privileged Information
15 until the dispute is resolved. The Parties will thereafter meet and confer regarding
16 the disputed privilege claim. If the Parties cannot resolve their dispute, either Party
17 may seek a determination from the Court regarding whether the privilege applies.
18 The Producing Person must preserve the Inadvertently Produced Privileged
19 Information and the Receiving Party may not use the Inadvertently Produced
20 Privileged Information for any purpose until the dispute is resolved. This provision
21 is not intended to modify whatever procedure may be established in an e-discovery
22 order that provides for production without prior privilege review.

23
24 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

25
26 DATED: August 17, 2020

27 
28 HON. DOUGLAS F. MCCORMICK
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ **[full name]**, of _____
[full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [_____] in the case of *In re: Out of Network Substance Use Disorder Claims Against UnitedHealthcare*, Case No. 8:19-cv-02075-JVS(DFM). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: _____
City and State where signed: _____
Printed Name: _____
Signature: _____