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14 UNITED STATES DISTRICT COURT  
 15 CENTRAL DISTRICT OF CALIFORNIA  
 16 WESTERN DIVISION

17 ROBERTO CORDERO, an individual,  
 18 Plaintiff,

19 v.

20 PATRICK MCGONIGLE, an  
 21 individual, MED INFORMATIX, INC.,  
 a California corporation, THOMAS  
 22 MCGONIGLE, an individual, and  
 DOES 1 through 10, inclusive,  
 23 Defendants.

Case No. 13-CV-00198-SVW-JCG  
**[PROPOSED] PROTECTIVE  
 ORDER**

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1           WHEREAS, the Court has reviewed the parties' Stipulation and [Proposed]  
2 Protective Order filed October 4, 2013, and GOOD CAUSE appearing therefor,  
3           IT IS HEREBY ORDERED THAT:

4           1.     In this Protective Order, the words set forth below shall have the  
5 following meanings:

6                   a.     "Proceeding" means the above-entitled proceeding 13-CV-  
7 00198-SVW-JCG.

8                   b.     "Court" means the Hon. Stephen V. Wilson, Hon. Jay C.  
9 Gandhi, or any other judge to which this Proceeding may be assigned, including  
10 Court staff participating in such proceedings.

11                   c.     "Confidential" means any information which is in the  
12 possession of a Designating Party who believes in good faith that such information  
13 is entitled to confidential treatment under applicable law.

14                   d.     "Confidential Materials" means any Documents, Testimony or  
15 Information as defined below designated as "Confidential" pursuant to the  
16 provisions of this Protective Order.

17                   e.     "Designating Party" means the Party that designates Materials  
18 as "Confidential."

19                   f.     "Disclose" or "Disclosed" or "Disclosure" means to reveal,  
20 divulge, give, or make available Documents, Information, or Testimony as defined  
21 below, or any part thereof, or any information contained therein.

22                   g.     "Documents" means (i) all documents, writings, materials,  
23 tangible things, and information that have been produced in discovery in this  
24 Proceeding by any person, (ii) all electronically stored information, whether stored  
25 on a computer or other media, regardless of the format in which it was created, and  
26 (iii) any copies, reproductions, or summaries of all or any part of the foregoing.

27                   h.     "Information" means the content of Documents or Testimony.

28                   i.     "Testimony" means all depositions, declarations or other

1 testimony taken or used in this Proceeding.

2           2.     The Designating Party shall have the right to designate as  
3 “Confidential” any Documents, Testimony or Information that the Designating  
4 Party in good faith believes to contain non-public information that is entitled to  
5 confidential treatment under applicable law.

6           3.     The entry of this Protective Order does not alter, waive, modify, or  
7 abridge any right, privilege or protection otherwise available to any Party with  
8 respect to the discovery of matters, including but not limited to any Party’s right to  
9 assert the attorney-client privilege, the attorney work product doctrine, or other  
10 privileges, or any Party’s right to contest any such assertion.

11           4.     Any Documents, Testimony or Information to be designated as  
12 “Confidential” must be clearly so designated before the Document, Testimony or  
13 Information is Disclosed or produced. The parties may agree that the case name and  
14 number are to be part of the “Confidential” designation. The “Confidential”  
15 designation should not obscure or interfere with the legibility of the designated  
16 Information.

17           a.     For Documents (apart from transcripts of depositions or other  
18 pretrial or trial proceedings), the Designating Party must affix the legend  
19 “Confidential” on each page of any Document containing such designated  
20 Confidential Material.

21           b.     For Testimony given in depositions the Designating Party may  
22 either:

23           i.     identify on the record, before the close of the deposition,  
24 all “Confidential” Testimony, by specifying all portions of the  
25 Testimony that qualify as “Confidential;” or

26           ii.    designate the entirety of the Testimony at the deposition  
27 as “Confidential” (before the deposition is concluded) with the right to  
28 identify more specific portions of the Testimony as to which protection

1 is sought within 30 days following receipt of the deposition transcript.  
2 In circumstances where portions of the deposition Testimony are  
3 designated for protection, the transcript pages containing  
4 “Confidential” Information may be separately bound by the court  
5 reporter, who must affix to the top of each page the legend  
6 “Confidential,” as instructed by the Designating Party.

7 c. For Information produced in some form other than Documents,  
8 and for any other tangible items, including, without limitation, compact discs or  
9 DVDs, the Designating Party must affix in a prominent place on the exterior of the  
10 container or containers in which the Information or item is stored the legend  
11 “Confidential.” If only portions of the Information or item warrant protection, the  
12 Designating Party, to the extent practicable, shall identify the “Confidential”  
13 portions.

14 5. The inadvertent production by any of the undersigned Parties or non-  
15 Parties to the Proceedings of any Document, Testimony or Information during  
16 discovery in this Proceeding without a “Confidential” designation, shall be without  
17 prejudice to any claim that such item is “Confidential” and such Party shall not be  
18 held to have waived any rights by such inadvertent production. In the event that any  
19 Document, Testimony or Information that is subject to a “Confidential” designation  
20 is inadvertently produced without such designation, the Party that inadvertently  
21 produced the document shall give written notice of such inadvertent production  
22 within twenty (20) days of discovery of the inadvertent production, together with a  
23 further copy of the subject Document, Testimony or Information designated as  
24 “Confidential” (the “Inadvertent Production Notice”). Upon receipt of such  
25 Inadvertent Production Notice, the Party that received the inadvertently produced  
26 Document, Testimony or Information shall promptly destroy the inadvertently  
27 produced Document, Testimony or Information and all copies thereof, or, at the  
28 expense of the producing Party, return such together with all copies of such

1 Document, Testimony or Information to counsel for the producing Party and shall  
2 retain only the “Confidential” designated Materials. Should the receiving Party  
3 choose to destroy such inadvertently produced Document, Testimony or  
4 Information, the receiving Party shall notify the producing Party in writing of such  
5 destruction within ten (10) days of receipt of written notice of the inadvertent  
6 production. This provision is not intended to apply to any inadvertent production of  
7 any Information protected by attorney-client or work product privileges. In the  
8 event that this provision conflicts with any applicable law regarding waiver of  
9 confidentiality through the inadvertent production of Documents, Testimony or  
10 Information, such law shall govern.

11           6.     In the event that counsel for a Party receiving Documents, Testimony  
12 or Information in discovery designated as “Confidential” objects to such  
13 designation with respect to any or all of such items, said counsel shall (a) advise  
14 counsel for the Designating Party, in writing, of such objections, the specific  
15 Documents, Testimony or Information to which each objection pertains, and all of  
16 the Designation Objections; and/or (b) file a motion with the Court seeking to  
17 remove any or all designations on Documents, Testimony or Information addressed  
18 by the Designation Objections (the “Designation Motion”). Pending a resolution of  
19 the Designation Motion by the Court, any and all existing designations on the  
20 Documents, Testimony or Information at issue in such Motion shall remain in  
21 place. The moving Party shall have the burden on any Designation Motion of  
22 establishing the inapplicability of the “Confidential” designation.

23           7.     Access to and/or Disclosure of Confidential Materials designated as  
24 “Confidential” shall be permitted only to the following persons:

- 25           a.     the Court;
- 26           b.     Attorneys of record in the Proceedings and in-house counsel to  
27 the undersigned Parties including the affiliated attorneys, paralegals, clerical and  
28 secretarial staff employed by such attorneys who are actively involved in the

1 Proceedings. Provided, however, that each non-lawyer given access to Confidential  
2 Materials shall be advised that such Materials are being Disclosed pursuant to, and  
3 are subject to, the terms of this Protective Order and that they may not be Disclosed  
4 other than pursuant to its terms;

5 c. those officers, directors, partners, members, employees and  
6 agents of all non-designating Parties that counsel for such Parties deems necessary  
7 to aid counsel in the prosecution and defense of this Proceeding, including, but not  
8 limited to, Patrick McGonigle and Thomas McGonigle; provided, however, that  
9 prior to the Disclosure of Confidential Materials to any such officer, director,  
10 partner, member, employee or agent, counsel for the Party making the Disclosure  
11 shall deliver a copy of this Protective Order to such person, shall explain that such  
12 person is bound to follow the terms of such Order, and shall secure the signature of  
13 such person on a statement in the form attached hereto as Exhibit 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 currently or was  
18 previously an officer, director, partner, member, employee or agent of an entity that  
19 has had access to the Confidential Materials;

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

26 g. mock jury participants, provided, however, that prior to the  
27 Disclosure of Confidential Materials to any such mock jury participant, counsel for  
28 the Party making the Disclosure shall deliver a copy of this Protective Order to such

1 person, shall explain that such person is bound to follow the terms of such Order,  
2 and shall secure the signature of such person on a statement in the form attached  
3 hereto as Exhibit A.

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

14 i. any other person that the Designating Party agrees to in writing.

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

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

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

25 a. operate as an admission by any person that any particular  
26 Document, Testimony or Information marked "Confidential" contains or reflects  
27 trade secrets, proprietary, confidential or competitively sensitive business,  
28 commercial, financial or personal information; or

1           b.     prejudice in any way the right of any Party (or any other person  
2 subject to the terms of this Protective Order):

3                 i.     to seek a determination by the Court of whether any  
4 particular Confidential Material should be subject to protection as  
5 “Confidential” under the terms of this Protective Order; or

6                 ii.    to seek relief from the Court on appropriate notice to all  
7 other Parties to the Proceeding from any provision(s) of this Protective  
8 Order, either generally or as to any particular Document, Material or  
9 Information.

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

15           12.    Any Information that may be produced by a non-Party witness in  
16 discovery in the Proceeding pursuant to subpoena or otherwise may be designated  
17 by such non-Party as “Confidential” under the terms of this Protective Order, and  
18 any such designation by a non-Party shall have the same force and effect, and create  
19 the same duties and obligations, as if made by one of the undersigned Parties  
20 hereto. Any such designation shall also function as consent by such producing Party  
21 to the authority of the Court in the Proceeding to resolve and conclusively  
22 determine any motion or other application made by any person or Party with respect  
23 to such designation, or any other matter otherwise arising under this Protective  
24 Order.

25           13.    If any person subject to this Protective Order who has custody of any  
26 Confidential Materials receives a subpoena or other process (“Subpoena”) from any  
27 government or other person or entity demanding production of Confidential  
28 Materials, the recipient of the Subpoena shall promptly give notice of the same by



1 electronic mail transmission, followed by either express mail or overnight delivery  
2 to counsel of record for the Designating Party, and shall furnish such counsel with a  
3 copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in its  
4 sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise  
5 oppose production of the Confidential Materials, and/or seek to obtain confidential  
6 treatment of such Confidential Materials from the subpoenaing person or entity to  
7 the fullest extent available under law. The recipient of the Subpoena may not  
8 produce any Documents, Testimony or Information pursuant to the Subpoena prior  
9 to the date specified for production on the Subpoena.

10 14. Nothing in this Protective Order shall be construed to preclude either  
11 Party from asserting in good faith that certain Confidential Materials require  
12 additional protection. The Parties shall meet and confer to agree upon the terms of  
13 such additional protection.

14 15. If, after execution of this Protective Order, any Confidential Materials  
15 submitted by a Designating Party under the terms of this Protective Order is  
16 Disclosed by a non-Designating Party to any person other than in the manner  
17 authorized by this Protective Order, the non-Designating Party responsible for the  
18 Disclosure shall bring all pertinent facts relating to the Disclosure of such  
19 Confidential Materials to the immediate attention of the Designating Party.

20 16. This Protective Order is entered into without prejudice to the right of  
21 any Party to knowingly waive the applicability of this Protective Order to any  
22 Confidential Materials designated by that Party. If the Designating Party uses  
23 Confidential Materials in a non-Confidential manner, then the Designating Party  
24 shall advise that the designation no longer applies.

25 17. If Confidential Materials or Information derived from Confidential  
26 Materials are submitted to or otherwise disclosed to the Court in connection with  
27 discovery motions and proceedings, the same shall be separately filed under seal  
28 with the clerk of the Court in an envelope marked: "CONFIDENTIAL – FILED

1 UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND WITHOUT ANY  
2 FURTHER SEALING ORDER REQUIRED.”

3 18. The Parties shall meet and confer regarding the procedures for use of  
4 Confidential Materials at trial and shall move the Court for entry of an appropriate  
5 order.

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

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

16 21. Upon written request made within thirty (30) days after the settlement  
17 or other termination of the Proceeding, the undersigned Parties shall have sixty (60)  
18 days to either (a) promptly return to counsel for each Designating Party all  
19 Confidential Materials and all copies thereof (except that counsel for each Party  
20 may maintain in its files, in continuing compliance with the terms of this Protective  
21 Order, all work product, and one copy of each pleading filed with the Court and one  
22 copy of each deposition together with the exhibits marked at the deposition), (b)  
23 agree with counsel for the Designating Party upon appropriate methods and  
24 certification of destruction or other disposition of such Confidential Materials, or  
25 (c) as to any Documents, Testimony or other Information not addressed by sub-  
26 paragraphs (a) and (b), file a motion seeking a Court order regarding proper  
27 preservation of such Materials. To the extent permitted by law the Court shall retain  
28 continuing jurisdiction to review and rule upon the motion referred to in sub-


1 paragraph (c) herein.

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

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

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15 **IT IS SO ORDERED:**

16 Dated: October 9, 2013

17 By:   
18 \_\_\_\_\_  
19 Hon. Jay C. Gandhi  
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**EXHIBIT A**

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, \_\_\_\_\_[NAME],  
\_\_\_\_\_ [POSITION AND EMPLOYER],

am about to receive Confidential Materials supplied in connection with the Proceeding 13-CV-00198-SVW-JCG. I certify that I understand that the Confidential Materials are provided to me subject to the terms and restrictions of the Protective Order filed in this Proceeding. I have been given a copy of the Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Materials, as defined in the Protective Order, including any notes or other records that may be made regarding any such materials, shall not be Disclosed to anyone except as expressly permitted by the Protective Order. I will not copy or use, except solely for the purposes of this Proceeding, any Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials provided to me in the Proceeding in a secure manner, and that all copies of such Materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such Materials will be returned to counsel who provided me with such Materials.

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I declare under penalty of perjury, under the laws of the State of California,  
that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at  
\_\_\_\_\_.

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone Number