



1 document, or thing as “Confidential,” “Confidential Attorneys’ Eyes Only,” or  
2 other designation(s) used by the parties, does not, in and of itself, create any  
3 entitlement to file such information, document, or thing, in whole or in part, under  
4 seal. Accordingly, reference to this Protective Order or to the parties’ designation  
5 of any information, document, or thing as “Confidential,” “Confidential Attorneys’  
6 Eyes Only,” or other designation(s) used by the parties, is wholly insufficient to  
7 warrant a filing under seal.

8         There is a strong presumption that the public has a right of access to judicial  
9 proceedings and records in civil cases. In connection with non-dispositive motions,  
10 good cause must be shown to support a filing under seal. The parties’ mere  
11 designation of any information, document, or thing as “Confidential,” “Confidential  
12 Attorneys’ Eyes Only,” or other designation(s) used by parties, does not -- **without**  
13 **the submission of competent evidence, in the form of a declaration or**  
14 **declarations, establishing that the material sought to be filed under seal**  
15 **qualifies as confidential, privileged, or otherwise protectable** -- constitute good  
16 cause.

17         Further, if sealing is requested in connection with a dispositive motion or  
18 trial, then compelling reasons, as opposed to good cause, for the sealing must be  
19 shown, and the relief sought shall be narrowly tailored to serve the specific interest  
20 to be protected. *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79 (9th  
21 Cir. 2010). For each item or type of information, document, or thing sought to be  
22 filed or introduced under seal in connection with a dispositive motion or trial, the  
23 party seeking protection must articulate compelling reasons, supported by specific  
24 facts and legal justification, for the requested sealing order. **Again, competent**  
25 **evidence supporting the application to file documents under seal must be**  
26 **provided by declaration.**

27         Any document that is not confidential, privileged, or otherwise protectable in  
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1 its entirety will not be filed under seal if the confidential portions can be redacted.  
2 If documents can be redacted, then a redacted version for public viewing, omitting  
3 only the confidential, privileged, or otherwise protectable portions of the document,  
4 shall be filed. Any application that seeks to file documents under seal in their  
5 entirety should include an explanation of why redaction is not feasible.  
6 Notwithstanding any other provision of this Protective Order, in the event that this  
7 case proceeds to trial, all information, documents, and things discussed or  
8 introduced into evidence at trial will become public and available to all members of  
9 the public, including the press, unless sufficient cause is shown in advance of trial  
10 to proceed otherwise.

11 **THE PARTIES ARE DIRECTED TO REVIEW CAREFULLY AND**  
12 **ACT IN COMPLIANCE WITH ALL ORDERS ISSUED BY THE**  
13 **HONORABLE JOHN F. WALKER, UNITED STATES DISTRICT JUDGE,**  
14 **INCLUDING THOSE APPLICABLE TO PROTECTIVE ORDERS AND**  
15 **FILINGS UNDER SEAL.**

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## TERMS OF PROTECTIVE ORDER

1. Definitions: For purposes of this Protective Order, the following definitions shall apply:

a. “Confidential Material”: Information (regardless of how created, generated, stored, or maintained) or tangible things that have not been made public, the disclosure of which the disclosing Party contends could cause harm to the business operations of the disclosing Party or provide improper advantage to others, as well as information that includes non-public personal or private information, such as (without limitation) personal health information.

b. “Confidential Attorneys’ Eyes Only” Material (“AEO Material”): Confidential Material that is technical, commercial, financial, or marketing in nature and that the disclosing Party reasonably and in good faith believes is so highly sensitive that its disclosure to an employee of a receiving Party would reveal significant business or financial advantages of the disclosing Party. It includes, without limitation, information that the Designating Party reasonably and in good faith believes relates to: (1) current business/strategic plans; (2) technical product specifications and information; (3) sales, cost, and price information including future sales/financial projections; (4) non-public marketing information including future marketing plans; (5) detailed sales and financial data; (6) customer or supplier lists; or (7) other information of competitive, technical, financial, or commercial significance comparable to the items listed in this paragraph.

c. “Challenging Party”: A Party that challenges the designation of information or items under this Protective Order.

d. “Designating Party”: A Party that designates information or items that it produces in disclosures or in responses to discovery as

1           “Confidential” or “Confidential Attorneys’ Eyes Only” Material.

2           2.       This Protective Order shall govern the production, use, and handling of  
3 Confidential Material and AEO Material produced by any **Party** or non-**Party** that  
4 provides discovery in connection with the above-captioned action (hereinafter  
5 referred to as “Parties” or “Party”), including responses to written discovery and  
6 deposition testimony. All Confidential Material and AEO Material subject to this  
7 Protective Order shall be used solely for the prosecution and/or defense of the  
8 Action and shall not be used by any other Party, other than the Party that produced  
9 it, in any litigation other than the Action, for business, for competitive purposes, or  
10 for any other purpose whatsoever. The protections conferred by this Protective  
11 Order cover not only Confidential Material and AEO Material, but also: (1) any  
12 information copied or extracted from such Material; (2) all copies, excerpts,  
13 summaries, or compilations of such Material; and (3) any testimony, conversations,  
14 or presentations by Parties or their Counsel that might reveal such Material.  
15 However, the protections conferred by this **Protective** Order do not cover the  
16 following information: (a) any information that is in the public domain at the time  
17 of disclosure to a receiving Party or becomes part of the public domain after its  
18 disclosure to a receiving Party as a result of publication not involving a violation of  
19 this **Protective** Order, including becoming part of the public record through trial or  
20 otherwise; and (b) any information known to the receiving Party prior to the  
21 disclosure or obtained by the receiving Party after the disclosure from a source who  
22 obtained the information lawfully and under no obligation of confidentiality to the  
23 Designating Party.

24           3.       Each Party shall designate Confidential Material by placing a  
25 “CONFIDENTIAL” stamp on each page so designated, for each document or **for**  
26 **such** information that, in good faith, the Party believes is Confidential Material.  
27 Any testimony designated as “CONFIDENTIAL” shall be so designated by a Party  
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1 at the time of said deposition or within seven (7) business days of receipt of the  
2 deposition transcript, whichever is the later. Documents and written discovery  
3 responses shall be designated as “CONFIDENTIAL” at the time of production. If  
4 timely corrected, an inadvertent failure to designate qualified information or items  
5 does not, standing alone, waive the Designating Party’s right to secure protection  
6 under this **Protective** Order for such material. Upon timely correction of a  
7 designation, the receiving Party must make reasonable efforts to assure that the  
8 material is treated in accordance with the provisions of this **Protective** Order.

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10 4. Each Party shall designate AEO Material by placing a  
11 “CONFIDENTIAL ATTORNEYS’ EYES ONLY” stamp on each page so  
12 designated, for each document or information that, in good faith, the Party believes  
13 is AEO Material. Any **deposition** testimony designated as “CONFIDENTIAL  
14 ATTORNEYS’ EYES ONLY” shall be so designated by a Party at the time of said  
15 deposition or within seven (7) business days of receipt of the deposition transcript,  
16 whichever is later. Documents and written discovery responses shall be designated  
17 as “CONFIDENTIAL ATTORNEYS’ EYES ONLY” at the time of production.  
18 Notwithstanding any other terms of this Protective Order, a Party may not designate  
19 material produced by another Party as AEO Material. If timely corrected, an  
20 inadvertent failure to designate qualified information or items does not, standing  
21 alone, waive the Designating Party’s right to secure protection under this  
22 **Protective** Order for such material. Upon timely correction of a designation, the  
23 receiving Party must make reasonable efforts to assure that the material is treated in  
24 accordance with the provisions of this **Protective** Order.

25 5. Confidential Material shall not be shown, revealed, released, disclosed,  
26 or communicated in any way to any person or entity, except those listed in  
27 Paragraphs 6 and 9 below, without the advance written authorization of the  
28 Designating Party.

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- 6. Confidential Material may only be disclosed to the following:
  - a. To the Court **and its personnel**, subject to Paragraph 9 below;
  - b. Outside counsel for the Parties to the Action, their respective associates, partners, clerks, paralegals, legal assistants, secretaries, and other support staff who are actively engaged in assisting such attorneys in the prosecution or defense of the Action;
  - c. Experts retained or consulted by any Party or their counsel as required to assist in the conduct of the Action, to the extent that counsel of record determines that disclosure is necessary for the prosecution or defense of the Action, provided that prior to disclosure, any such expert is provided with a copy of this Protective Order and acknowledges in writing that he or she agrees to be bound by these terms (see Exhibit A, attached hereto);
  - d. The Parties to the Action and their employees, to the extent that their respective counsel determines that such disclosure is necessary for the prosecution or defense of the Action; and
  - e. Clerical or ministerial service providers, including outside copying services and court reporters, retained by a Party's counsel to assist such counsel in connection with the Action.
  - f. Authors, addressees, or recipients of the Confidential Material.

7. AEO Material shall not be shown, revealed, released, disclosed, or communicated in any way to any person or entity, except those listed in Paragraphs 8 and 9 below, without the advance written authorization of the Designating Party.

- 8. AEO Material may only be disclosed to the following:
  - a. Outside counsel for the Parties to the Action, their respective

1 associates, partners, clerks, paralegals, legal assistants,  
2 secretaries, and other support staff who are actively engaged in  
3 assisting such attorneys in the prosecution or defense of the  
4 Action;

- 5 b. To the Court **and its personnel**, subject to Paragraph 9 below;  
6 c. To the Party who **or which** produced it;  
7 d. The author of the document or material and to anyone shown on  
8 the document or material as having received it in the ordinary  
9 course of business;  
10 e. Experts retained or consulted by any Party or **its** counsel as  
11 required to assist in the conduct of the Action, to the extent that  
12 counsel of record determines that disclosure is necessary for the  
13 prosecution or defense of the Action, provided that prior to  
14 disclosure, any such expert is provided with a copy of this  
15 Protective Order and acknowledges in writing that he or she  
16 agrees to be bound by these terms (see Exhibit A, attached  
17 hereto); and  
18 f. To such other persons as hereafter may be designated by written  
19 authorization by the Designating Party or by further order of the  
20 Court.

21 9. Without written permission from the Designating Party or a Court  
22 order secured after appropriate notice to all interested persons, a Party may not file  
23 in the public record any Confidential Material or AEO Material. A Party that seeks  
24 to file under seal any Confidential Material or AEO Material must comply with  
25 Civil Local Rule 79-5, **this Protective Order, District Judge Walter's Standing**  
26 **Order Re: Proposed Protective Orders and Filings Under Seal.** Confidential  
27 Material or AEO Material may only be filed under seal pursuant to a Court order  
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1 authorizing the sealing of the specific Confidential Material or AEO Material at  
2 issue.

3 10. Challenging Confidentiality Designations.

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

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

27 c. Judicial Intervention. If the Parties cannot resolve a challenge  
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1 without Court intervention, the Challenging Party may file a motion (in  
2 compliance with Civil Local Rule 79-5, if applicable) challenging  
3 confidentiality at any time if there is good cause for doing so, including a  
4 challenge to the designation of a deposition transcript or any portions thereof.  
5 Any motion brought pursuant to this provision must be accompanied by a  
6 competent declaration affirming that the movant has complied with the meet  
7 and confer requirements imposed by the preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on  
9 the Designating Party. Frivolous challenges and those made for an improper  
10 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other  
11 parties) may expose the Challenging Party to sanctions. All parties shall  
12 continue to afford the material in question the level of protection to which it  
13 is entitled under the Designating Party's designation until the Court rules on  
14 the challenge.

15 11. A Designating Party will use reasonable efforts to avoid designating,  
16 or to de-designate in a reasonable time after request, any document or information  
17 as "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY" that  
18 is not entitled to such designation or that is generally available to the public.

19 12. Subject to the provisions of the Federal Rules of Civil Procedure and  
20 the Federal Rules of Evidence, nothing in this Protective Order shall in any way  
21 limit the uses that the Parties may make of their own Confidential or AEO Material.  
22 To the extent a Designating Party elects to publicly disclose Confidential or AEO  
23 Material in a court filing (by not **applying to have such material** under seal), all  
24 other Parties may do so likewise.

25 13. Within thirty (30) days of the conclusion of the Action, each Party  
26 shall return all Material designated "CONFIDENTIAL" and/or "CONFIDENTIAL  
27 ATTORNEYS' EYES ONLY" to the Party on whose behalf such Material was  
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1 produced or, at the option of the producing Party, counsel for each Party shall  
2 certify in writing that such material has been destroyed. Each Party returning or  
3 destroying CONFIDENTIAL and/or CONFIDENTIAL ATTORNEYS' EYES  
4 ONLY Material is responsible for any costs associated with the return and/or  
5 destruction of such Materials.

6 14. If a Party is served with a subpoena or a court order issued in other  
7 litigation that compels disclosure of any CONFIDENTIAL and/or  
8 CONFIDENTIAL ATTORNEYS' EYES ONLY Material, that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification shall  
10 include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order to  
12 issue in the other litigation that some or all of the material covered by the subpoena  
13 or order is subject to this Protective Order. Such notification shall include a copy  
14 of this Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued  
16 by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with  
18 the subpoena or court order shall not produce any information designated in this  
19 action as "CONFIDENTIAL" and/or "CONFIDENTIAL ATTORNEYS' EYES  
20 ONLY" before a determination by the court from which the subpoena or order  
21 issued, unless the Party has obtained the Designating Party's permission. The  
22 Designating Party shall bear the burden and expense of seeking protection in that  
23 court of its confidential material. Nothing in these provisions should be construed  
24 as authorizing or encouraging a receiving Party in this action to disobey a lawful  
25 directive from another court.

26 15. This Protective Order shall continue to be binding throughout the  
27 Action and after its conclusion. The termination of the Action shall not relieve any  
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1 person to whom Confidential Material or AEO Material has been disclosed from  
2 the obligation of maintaining the confidentiality of such information as set forth  
3 herein.

4 16. Nothing herein shall operate as a waiver of the right of any person to  
5 object on any ground to the admissibility of any Confidential Material or AEO  
6 Material in connection with any motions, trial, or arbitration. Nothing herein shall  
7 prevent a witness from reviewing a transcript of his or her deposition testimony and  
8 any exhibits thereto, in accordance with the Federal Rules of Civil Procedure, or  
9 any stipulation placed on the record by counsel.

10 17. All disputes concerning matters falling within the scope of or relating  
11 to the interpretation of this Protective Order shall be submitted for ruling to the  
12 above-captioned Court. At any hearing on such submitted matter, **the Parties may**  
13 **seek, before the hearing or at the commencement of the hearing, a Court order**  
14 **excluding** all persons not specifically contemplated by Paragraphs 6, 8, and 9 from  
15 the hearing.

16 18. By **having** entered into this Protective Order, the Parties do not waive  
17 any right(s) to assert the attorney client privilege, work product doctrine, financial  
18 privacy, or any other objection that could be raised in response to any request to  
19 produce documents, interrogatory, and/or deposition examination.

20 19. The inadvertent production in discovery of any privileged or otherwise  
21 protected or exempted information, or Confidential Material or AEO Material as  
22 well as the inadvertent production in discovery of information without an  
23 appropriate designation of confidentiality, shall not be deemed a waiver or  
24 impairment of any claim or privilege or protection, including, but not limited to, the  
25 attorney-client privilege, the protection afforded to work-product materials or the  
26 subject matter thereof, or the confidential nature of any such information, provided  
27 that the producing Party shall immediately notify the receiving Party in writing  
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1 when inadvertent production is discovered. Upon receiving written notice from the  
2 producing Party that privileged information or work-product material has been  
3 inadvertently produced, the receiving Party shall not duplicate the privileged  
4 information, or distribute the privileged information by any means other than  
5 returning it to the producing Party. In addition, once notified of the production of  
6 inadvertent privileged information, the receiving Party shall, if such material has  
7 previously been disclosed to others by the receiving Party, take reasonable steps to  
8 obtain all such previously disclosed material and advise such persons of the claims  
9 of privilege.

10           20. Any violation of the terms of this Protective Order **may** be punishable  
11 by money damages, interim or final injunctive or other equitable relief, sanctions,  
12 contempt of court citation, or such other or additional relief as deemed appropriate  
13 by the Court. The foregoing remedies shall be in addition to any other common law  
14 or statutory relief available for violation of the terms of this Protective Order.  
15 Nothing herein is intended to expand the authority vested in any Magistrate Judge  
16 to whom a dispute under this **Protective** Order is assigned.

17           21. Agreeing to produce or receive Material designated as  
18 “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES ONLY,” or  
19 otherwise complying with the terms of this Protective Order, shall not:

- 20                   a. Operate as an admission by any Party that any Confidential  
21                   Material or AEO Material contains or reflects trade secrets<sup>1</sup> or  
22                   any other type of confidential or proprietary information entitled  
23                   to protection under applicable law;

24 \_\_\_\_\_  
25 <sup>1</sup> Pursuant to California Civil Code § 3426.1, “trade secrets,” as used  
26 herein, “means information, including a formula, pattern, compilation, program,  
27 device, method, technique, or process, that: (1) Derives independent economic  
28 value, actual or potential, from not being generally known to the public or to other  
persons who can obtain economic value from its disclosure or use; and (2) Is the  
subject of efforts that are reasonable under the circumstances to maintain its  
secrecy.”

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- b. Prejudice in any way the rights of any Party to object to the production of documents it considers not subject to discovery, or operate as an admission by any Party that the restrictions and procedures set forth herein constitute adequate protection for any particular information deemed by any Party to be Confidential Material or AEO Material;
- c. Prejudice in any way the rights of any Party to object to the authenticity or admissibility into evidence of any document, testimony, or the evidence subject to this Protective Order;
- d. Prejudice in any way the rights of any Party to seek a determination by the Court whether any Confidential Material or AEO Material should be subject to the terms of this Protective Order;
- e. Prejudice in any way the rights of any Party to petition the Court for a further protective order, or modification or amendment of this **Protective Order**, relating to any purportedly Confidential Material or AEO Material;
- f. Prejudice in any way the rights of any Party to petition the Court for permission to disclose or use particular Confidential Material or AEO Material more broadly than would otherwise be permitted by the terms of this Protective Order; or
- g. Prevent any Designating Party from agreeing to alter or waive the provisions or protections provided for herein with respect to any particular Confidential Material or AEO Material.

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22. **The terms of this Protective Order became effective, pursuant to the Parties' Stipulation, upon the date of execution of the Stipulation by counsel for the Parties.**

**IT IS SO ORDERED.**

DATED: December 18, 2013



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MARGARET A. NAGLE  
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

3 I, \_\_\_\_\_, declare as follows:

4 I have been requested by counsel for \_\_\_\_\_ to assist  
5 with or review certain materials that I have been informed contain  
6 “CONFIDENTIAL” Material or “CONFIDENTIAL ATTORNEY’S EYES  
7 ONLY” Material within the terms of the Protective Order issued by the Court in the  
8 action captioned *IV Solutions, Inc. v. TakeCare Insurance Company, Inc.*, United  
9 States District Court, Central District of California, Case No. CV13-04592-JFW-  
10 MAN (the “Action”).

11 I have read the Protective Order in this action and am familiar with its terms.  
12 On behalf of myself and the business organization with which I am employed or  
13 affiliated, if one exists, I agree to comply with and be bound by the Protective  
14 Order and agree not to disclose any “CONFIDENTIAL” Material or  
15 “CONFIDENTIAL ATTORNEY’S EYES ONLY” Material. I also agree to use  
16 such “CONFIDENTIAL” Material or “CONFIDENTIAL ATTORNEY’S EYES  
17 ONLY” Material to assist counsel only in the Action and not for any other purpose  
18 whatsoever.

19 I hereby submit myself and my business organization, if one exists, to the  
20 jurisdiction of the United States District Court for the Central District of California

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for the limited purpose of any proceeding relating to performance under,  
compliance with, or violation of the Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_.  
City, State

DATED: \_\_\_\_\_ BY: \_\_\_\_\_.  
Signature  
\_\_\_\_\_  
Title  
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