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11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

14 NOAH U., 15 Plaintiff, 16 vs. 17 TRIBUNE COMPANY MEDICAL PLAN AND BLUE CROSS BLUE 18 SHIELD OF ILLINOIS, 19 Defendants.	}	Case No. 2:14-cv-03062-SVW-AJW PROTECTIVE ORDER Date: November 17, 2014 Time: 10:00 a.m. Courtroom: 690 Complaint Filed: April 22, 2014 Judge: Hon. Stephen V. Wilson
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1 The Motion for Protective Order of Defendant Blue Cross Blue Shield of Illinois
2 was heard on November 17, 2014 at 10:00 a.m., in Department 690 of the above-entitled
3 Court. The appearance of counsel are noted in the Court's record.

4 Upon consideration of the papers and other documentary evidence submitted by
5 the parties, as well as oral argument at the time of the hearing, and good cause appearing,
6 the Court orders as follows:

7 Certain documents and information have been and may be sought, produced or
8 exhibited by and between the parties in this proceeding (the "Proceeding"). Some of these
9 documents relate to the parties' and non-parties' financial information, competitive
10 information, personal health information ("PHI") (as defined in 45 C.F.R. § 160.103) or
11 other types of sensitive information which the party making the production deems
12 confidential ("Confidential Information"). To expedite the flow of discovery material and
13 to preserve the confidentiality of certain documents and information, it is hereby

14 ORDERED that:

15 **1. Scope**

16 a. This Order shall govern all documents, the information contained therein,
17 and all other information produced or disclosed during the Proceeding whether revealed
18 in a document, deposition, other testimony, discovery response or otherwise, by any
19 party, including any non-party, in this Proceeding (the "Supplying Party") to any other
20 party, including any non-party, (the "Receiving Party"), when the same is designated
21 with the procedures set forth herein. This Order is binding upon the parties to the
22 Proceeding, as well as their respective attorneys, agents, representatives, officers and
23 employees and others as set forth in this Order. This Order is also binding on and applies
24 to all non-parties who either produce or receive documents or information in connection
25 with this Proceeding.

26 b. Under this Order, any Supplying Party shall have the right to identify and
27 designate as "Confidential" any document or other information it produces or provides,
28 or any testimony given in this Proceeding, which testimony or discovery material is

1 believed in good faith by that Supplying Party, and by the Supplying Party’s counsel, to
2 constitute, reflect or disclose trade secret or other confidential research, development, or
3 commercial information, or personal health information, contemplated under Rule 26(c)
4 of the Federal Rules of Civil Procedure (“Designated Material”).

5 c. “Confidential Information” as used herein means any Designated Material
6 that is designated pursuant to this Protective Order as “Confidential” by the Supplying
7 Party, whether it is a document, information contained in a document, information
8 revealed during a deposition or other testimony, information revealed in an interrogatory
9 answer or information otherwise revealed.

10 d. A party may designate as “Confidential” information in the possession of
11 and supplied by a non-party if the information was transmitted to the non-party under an
12 agreement or an obligation that it would remain confidential and the information
13 otherwise complies with Paragraph 1(c).

14 e. Subject to Paragraph 12(c), all documents and other materials produced in
15 this litigation shall be used only for purposes of this litigation whether or not a Supplying
16 Party designates such documents or materials as “Confidential.”

17 f. This protective order meets the requirements of a qualified protective order
18 as defined in 45 C.F.R. Part 164.512(e)(1)(v) and pursuant to California Civil Code § 56
19 *et seq.*

20 **2. Protected Health Information.**

21 a. Protected Health Information. The current parties (and their attorneys) and
22 any future parties (and their attorneys) to the above-captioned matter are hereby
23 authorized to receive, subpoena, and transmit “protected health information” (“PHI”)
24 pertaining to the health care claims at issue in this litigation to the extent and subject to
25 the terms outlined herein, which shall be marked as “CONFIDENTIAL.”

26 1. For the purposes of this Order, “PHI” shall have the same scope and
27 definition as set forth in 45 C.F.R. § 160.103. Without limiting the generality of the
28 foregoing, “PHI” includes, but is not limited to health information including

1 demographic information relating to (i) the past, present, or future physical or
2 mental condition of an individual, (ii) the provision of care to an individual, or
3 (iii) the past, present, or future payment for health care services provided to an
4 individual which identifies the individual or which reasonably could be expected to
5 identify the individual involved in a health insurance claim at issue in this
6 litigation.

7 2. All “covered entities” (as defined by 45 C.F.R. § 160.103) are hereby
8 authorized to disclose PHI pertaining to the claims at issue in this litigation to all
9 attorneys now of record in this matter or who may become of record in the future
10 of this litigation.

11 3. The parties and their attorneys shall be permitted to use the PHI
12 pertaining to the claims at issue in this litigation in any manner that is reasonably
13 connected with the above-captioned litigation. This includes but is not limited to,
14 disclosures to the parties, their attorneys of record, the attorneys’ firm (i.e.,
15 attorneys, support staff, agents, and consultants), the parties’ insurers, experts,
16 consultants, court personnel, court reporters, copy services, trial consultants, jurors,
17 venire members, and other entities involved in the litigation process.

18 4. This Order shall not control or limit the use of PHI pertaining to the
19 claims at issue in this litigation that comes into the possession of any party or any
20 party’s attorney from a source other than a “covered entity” (as that term is defined
21 in 45 C.F.R. § 160.103).

22 5. Nothing in this Order authorizes any party to obtain medical records
23 or information through means other than formal discovery requests, subpoena, or
24 deposition.

25 **3. Designation of Confidentiality**

26 Documents or information may be designated CONFIDENTIAL within the
27 meaning of this Order in the following ways:

28 a. Specific documents produced by a Supplying Party shall, if appropriate, be

1 designated as “Confidential” by marking the first page of the document and each
2 subsequent page thereof containing Confidential Information with the legend:
3 “CONFIDENTIAL.”

4 b. In the case of interrogatory answers and responses to requests for
5 admissions, if appropriate, designation of Confidential Information shall be made by
6 means of a statement in the answers or responses specifying that the answers or responses
7 or specific parts thereof are designated “CONFIDENTIAL.” The following legend shall
8 be placed on each page of interrogatory answers or responses to requests for admission
9 containing Confidential Information: “CONTAINS CONFIDENTIAL
10 INFORMATION.”

11 c. In the case of depositions and the information contained in depositions
12 (including exhibits), designation of the portions of the transcript (including exhibits)
13 which contain Confidential Information shall be made by a statement to such effect on
14 the record in the course of the deposition by counsel for the party or witness producing
15 such information, or by letter from such counsel within thirty (30) days of receipt of the
16 deposition transcript or copy thereof (or written notification that the transcript is
17 available). The entire deposition transcript (including exhibits) shall be treated as
18 Confidential under this Order until the expiration of the above-referenced thirty-day
19 period for designation by letter, except that the deponent may review the transcript of his
20 or her own deposition during this thirty-day period. After the expiration of the thirty (30)
21 day period, the following legend shall be conspicuously placed on the front and back of
22 any original deposition transcript, and on each copy thereof, which contains Confidential
23 Information: “CONTAINS CONFIDENTIAL INFORMATION.” If portions of a
24 videotaped deposition are designated as “CONFIDENTIAL,” the videocassette or other
25 videotape container shall be labeled with the same legend provided for in Paragraph 2(a).

26 d. To the extent that matter stored or recorded in the form of electronic or
27 magnetic media (including information, files, databases, or programs stored on any
28 digital or analog machine-readable device, computers, discs, networks or tapes)

1 (“Computerized Material”) is produced by any party in such form, the Supplying Party
2 may designate such matter as “CONFIDENTIAL” by cover letter referring generally to
3 such matter or by affixing to such media a label with the legend provided for in
4 Paragraph 2(a) above. Whenever any party to whom Computerized Material designated
5 as “CONFIDENTIAL” is produced reduces such material to hard-copy form, such party
6 shall mark such hard-copy form with the legend provided for in Paragraph 2(a) above.

7 e. To the extent that any party or counsel for any party creates, develops or
8 otherwise establishes on any digital or analog machine-readable device, recording media,
9 computer, disc, network, tape, file, database or program information designated
10 CONFIDENTIAL, that party and/or its counsel must take all necessary steps to ensure
11 that access to such media is properly restricted to those persons who, by the terms of this
12 Order, may have access to Confidential Information, and will affix to any media
13 containing such information a label with the legend provided for in Paragraph 2(a) above.

14 f. The filing of any documents and materials with the Court containing or
15 reflecting the contents of Confidential Information shall be governed by Local Rule
16 79-5.1. Each party shall use its best efforts to minimize filings that necessitate the filing
17 of documents and materials designated Confidential under seal. Without written
18 permission from the Supplying Party or a Court order, a party may not file in the public
19 record in this action any designated material. Filings may be made under seal only
20 pursuant to a court order authorizing the sealing of the specific material at issue. The fact
21 that a document has been designated under this Order is insufficient to justify filing under
22 seal. Instead, parties must explain the basis for confidentiality of each document sought
23 to be filed under seal. If a Receiving Party’s request to file designated material under seal
24 pursuant to L.R. 79-5.1 is denied by the Court, then the Receiving Party may file the
25 material in the public record unless (1) the Supplying Party seeks reconsideration within
26 four days of the denial, or (2) as otherwise instructed by the Court.

27 g. Documents filed under seal may be unsealed at the Court’s discretion.
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1 **4. Use of Confidential Information**

2 Subject to Paragraph 12(c), Confidential Information shall not be used by any
3 person, other than the Supplying Party, for any purpose other than conducting this
4 Proceeding, *Noah U. v. Tribune Company Medical Plan and Blue Cross and Blue Shield*
5 *of Illinois*, which is pending in the United States District Court for the Central District of
6 California, and in no event shall such information be used for any business, competitive,
7 personal, private, public or other purpose.

8 **5. Disclosure of Confidential Information**

9 a. The attorneys of record are responsible for employing *reasonable* measures,
10 consistent with this Order, to control access to, and distribution of information designated
11 “CONFIDENTIAL” pursuant to this Order.

12 b. Subject to Paragraph 6 below, access to information designated
13 “CONFIDENTIAL” pursuant to this Order shall be limited to the following persons:

14 1. The parties, including outside and in-house counsel for the parties, as
15 well as members and employees of their firms including but not limited to their
16 paralegals, investigative, secretarial and clerical personnel who are employed by
17 and engaged in assisting such counsel in this Proceeding.

18 2. Outside photocopying, data processing or graphic production services
19 employed by the parties or their counsel to assist in this Proceeding.

20 3. Any outside expert or consultant (or any employee of such outside
21 expert or consultant) who is retained, or sought to be retained, by counsel for a
22 party in this Proceeding, for purposes of consulting, and/or testifying in this
23 Proceeding, and to whom counsel in good faith has deemed disclosure of such
24 “CONFIDENTIAL” material is reasonably necessary in order to assist in the
25 preparation or the conduct of this Proceeding. This paragraph shall not relieve,
26 change or otherwise affect any obligations or limitations imposed on any person by
27 contract or law regarding the disclosure or use of trade secrets or other
28 confidential, personal health, or proprietary information.

1 4. Any fact witness, at the witness' deposition in this Proceeding, but
2 only if counsel who discloses "CONFIDENTIAL" information to the witness
3 determines, in good faith, that such disclosure is reasonably necessary and
4 appropriate to assist in the conduct of this Proceeding.

5 5. Any person (a) who was involved in the preparation of the document
6 or other tangible medium containing the Confidential Information and/or who is
7 shown on the face of "CONFIDENTIAL" material to have authored or received
8 the "CONFIDENTIAL" material sought to be disclosed to that person, or (b) who
9 is specifically referenced by name and substantively discussed in the
10 "CONFIDENTIAL" material, but only as to the specific material the person
11 authored or received, or in which such person is referenced and discussed.

12 6. This Court or any other Court exercising jurisdiction with respect to
13 this litigation, Court personnel, jurors, and qualified persons (including necessary
14 clerical personnel) recording, taking or transcribing testimony or argument at any
15 deposition, hearing, trial or appeal in this litigation; and

16 7. Any other person to whom the Supplying Party agrees in writing or on
17 the record in advance of the disclosure, provided that the party seeking to make the
18 disclosure must first submit a request, in writing or on the record, to the Supplying
19 Party explaining why the disclosure is necessary. If the Supplying Party does not
20 agree to allow the disclosure, the party seeking to make the disclosure may file a
21 motion with the Court for approval to make the disclosure.

22 **6. Notification of Protective Order**

23 Confidential Information shall not be disclosed to a person described in Paragraphs
24 4(b)(ii), 4(b)(iii), 4(b)(iv), 4(b)(vii) unless and until such person has executed an
25 Agreement of Confidentiality in substantially the form attached hereto as Exhibit A. The
26 originals of an executed Agreement of Confidentiality shall be maintained by counsel for
27 the party who obtained it until the final resolution of this litigation, and shall not be
28 subject to discovery except upon motion on notice and a showing of good cause. This

1 prohibition includes either direct or indirect disclosure, including but not limited to, any
2 disclosure by counsel or experts. At any deposition and absent the agreement of the
3 parties, prior to the disclosure of any Confidential Information, the deponent shall be
4 provided a copy of the form attached hereto as Exhibit B and shall be asked to
5 affirmatively state on the record that he or she has received the form and consents to the
6 restrictions contained within the Stipulated Protective Order, a copy of which shall be
7 provided to the deponent.

8 **7. Use of Confidential Information at Trial**

9 The rules and procedures governing the use of Confidential Information at trial
10 shall be determined by the Court at the final pretrial conference.

11 **8. Objections to Designations**

12 A party may, at any time, make a good faith challenge to the propriety of a
13 Confidential Information designation. In the event a party objects to the designation of
14 any material under this Order, the objecting party shall consult with the designating party
15 to attempt to resolve their differences. If the parties are unable to reach an accord as to
16 the proper designation of the material, after giving notice to the designating party, the
17 objecting party may apply to the Court for a ruling that the material shall not be so
18 designated. If such a motion is made, the designating party has the burden of establishing
19 that the designation is proper. If no such motion is made, the material will retain its
20 designation. Any documents or other materials that have been designated
21 “CONFIDENTIAL” shall be treated as Confidential until such time as the Court rules
22 that such materials should not be treated as Confidential.

23 **9. Preservation of Rights and Privileges**

24 Nothing contained in this Order shall affect the right, if any, of any party or
25 witness to make any other type of objection, claim, or other response to discovery
26 requests, including, without limitation, interrogatories, requests for admissions, requests
27 for production of documents or questions at a deposition. Nor shall this Order be
28 construed as a waiver by any party of any legally cognizable privilege to withhold any

1 Confidential Information other than on the basis that it has been designated Confidential,
2 or of any right which any party may have to assert such privilege at any stage of this
3 litigation.

4 **10. Return or Destruction of Materials**

5 Within sixty (60) business days after the final resolution of this litigation, all
6 Confidential Information shall be returned to counsel for the party or non-party that
7 produced it or shall be destroyed. As to those materials that contain or reflect
8 Confidential Information, but that constitute or reflect counsel’s work product, counsel of
9 record for the parties, or non-parties, shall be entitled to retain such work product in their
10 files in accordance with the provisions of this Order, so long as it is clearly marked to
11 reflect that it contains information subject to this Order. Such materials may not be used
12 in connection with any other proceeding or action. Counsel shall be entitled to retain
13 pleadings, affidavits, motions, briefs, other papers filed with the Court, deposition
14 transcripts, and the trial record (including exhibits) even if such materials contain
15 Confidential Information, so long as such materials are clearly marked to reflect that they
16 contain information subject to this Order and may not be used in connection with any
17 other proceeding or action.

18 **11. Inadvertent or Unintentional Disclosure**

19 A Supplying Party that inadvertently fails to designate discovery material as
20 “Confidential” or mis-designates discovery material as “Confidential” pursuant to this
21 Order at the time of its production shall be entitled to make a correction to its designation
22 within a reasonable time of the discovery of the non- or mis-designation. Such correction
23 and notice thereof shall be made in writing, accompanied by substitute copies of each
24 item of discovery material, appropriately designated. Those individuals who received the
25 discovery material prior to notice of non- or mis-designation by the Supplying Party shall
26 within five (5) days of receipt of the substitute copies, take reasonable steps to destroy or
27 return to the law firm representing the Supplying Party all copies of such mis-designated
28 documents. The obligation to treat such material pursuant to the corrected designation

1 shall be prospective only, and those individuals who reviewed the mis-designated
2 discovery material prior to notice of the mis-designation by the Supplying Party shall
3 abide by the provisions of this Order with respect to all future use and disclosure of any
4 information contained in the mis-designated materials.

5 **12. Other Provisions**

6 a. The restrictions set forth in this Order shall not apply to documents or
7 information designated Confidential that are publicly available or that are obtained
8 independently and under rightful means by the Receiving Party, unless they became so
9 due to a violation of this Order.

10 b. A party's compliance with the terms of this Order shall not operate as an
11 admission that any particular document is or is not (a) confidential, (b) privileged or
12 (c) admissible in evidence at trial.

13 c. Any party or person bound by this Order who receives a subpoena (or other
14 process) from any person (including natural persons, corporations, partnerships, firms,
15 governmental agencies, departments or bodies, boards or associations) who is not a party
16 to this Order, which subpoena seeks production or other disclosure of such Confidential
17 Information shall immediately give written notice by electronic mail to counsel for the
18 other party or person who produced the materials designated as Confidential. The written
19 notice shall identify the materials sought and enclose a copy of the subpoena or other
20 process, unless ordered otherwise by a court of competent jurisdiction. Nothing herein
21 shall be construed to obligate the person subject to service or other process to make a
22 motion or undertake other legal process, or to appear before any court or administrative
23 body in opposition to a motion or other legal process seeking production of any
24 Confidential materials, provided such person invokes, to the extent reasonably possible,
25 the highest level of confidentiality available under applicable law, rule, regulation, court
26 order, or other compulsory process, at the time of disclosure of such Confidential
27 materials.

28 d. This Order shall apply to non-parties who provide discovery, by deposition,

1 production of documents or otherwise, in this litigation, if said non-party requests, in
2 writing, the protection of this Order as to said non-party's Confidential Information and
3 complies with the provisions of this Order.

4 e. Upon the final resolution of this litigation (including conclusion of any
5 appeal), this Order shall remain in effect and continue to be binding, unless expressly
6 modified, superseded, or terminated by consent of all parties or by Order of the Court.
7 This Court expressly retains jurisdiction over this action for enforcement of the
8 provisions of this Order following the final resolution of this litigation.

9 f. This Order shall not prevent a party from applying to the Court for relief
10 therefrom, or from applying to the Court for further or additional protective orders, or
11 from agreeing to modifications of this Order, subject to the approval of the Court.

12 g. The Court may amend, modify or dissolve this Protective Order at any time.

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14 IT IS SO ORDERED.

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16 DATE: November 18, 2014

17 By: 
18 HON. ANDREW J. WISTRICH
19 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 NOAH U.,

4 Plaintiff,

5 vs.

6 TRIBUNE COMPANY MEDICAL PLAN
7 AND BLUE CROSS BLUE SHIELD OF
8 ILLINOIS,

8 Defendants.

) Case No. 2:14-cv-03062-SVW-AJW

) Complaint Filed: April 22, 2014

) Judge: Hon. Stephen V. Wilson

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11 CERTIFICATION

12 1. My name is _____.

13 I live at _____.

14 I am employed as (state position) _____.

15 by (state name and address of employer) _____.

16 2. I have read the Protective Order that has been entered in this case, and a copy of it
17 has been given to me. I understand the provisions of this Order, and agree to comply
18 with and to be bound by its provisions.

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

20 Executed this _____ day of _____, 201____.

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22 by _____

23 (signature)

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EXHIBIT B

1 **UNITED STATES DISTRICT COURT**
2 **CENTRAL DISTRICT OF CALIFORNIA**

3 NOAH U.,

4 Plaintiff,

5 vs.

6 TRIBUNE COMPANY MEDICAL PLAN
7 AND BLUE CROSS BLUE SHIELD OF
8 ILLINOIS,

8 Defendants.

) Case No. 2:14-cv-03062-SVW-AJW

) Complaint Filed: April 22, 2014

) Judge: Hon. Stephen V. Wilson

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11 **NOTICE TO DEPOSITION WITNESSES**

12 You are being shown one or more documents which have been designated as
13 “Confidential” pursuant to an Order of this Court. Except for providing testimony at this
14 deposition, you may not disclose these documents or their contents to any person other
15 than the attorney who represents you at this deposition. Further, neither these documents
16 nor their contents may be used by you for any purpose except that you may use them for
17 your testimony in connection with this litigation. In any event, you are prohibited from
18 using them for any business, competitive, personal, private, public, or other non-litigation
19 purpose. The improper disclosure or use of these documents or their contents may result
20 in the imposition of sanctions upon you by the Court. If you wish a complete copy of the
21 Court Order, a copy will be provided to you upon request.