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

17 UNITED STATES OF AMERICA  
 18 *ex rel.* GRAHAM MOUW,  
 19 an individual,

Plaintiff,

v.

21 KAISER FOUNDATION HEALTH  
 22 PLAN, INC., a California  
 23 Corporation,

Defendant.

Case No. CV 14-08051-JAK(AGR<sub>x</sub>)

**STIPULATED PROTECTIVE  
 ORDER**

Magistrate Judge Hon. Alicia G.  
 Rosenberg

1 **I. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6 enter the following Stipulated Protective Order. The parties acknowledge that this  
7 Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords from public disclosure and use extends  
9 only to the limited information or items that are entitled to confidential treatment  
10 under the applicable legal principles. The parties further acknowledge, as set forth  
11 in Section 11.3, below, that this Stipulated Protective Order does not entitle them to  
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
13 procedures that must be followed and the standards that will be applied when a  
14 party seeks permission from the court to file material under seal.

15 **II. GOOD CAUSE STATEMENT**

16 This action is likely to involve protected health information, customer and  
17 pricing lists and other valuable research, development, commercial, financial,  
18 technical and/or proprietary information for which special protection from public  
19 disclosure and from use for any purpose other than prosecution of this action is  
20 warranted. Such confidential and proprietary materials and information consist of,  
21 among other things, information covered by the Health Insurance Portability and  
22 Accountability Act (“HIPAA”), confidential business or financial information,  
23 information regarding confidential business practices, or other confidential  
24 research, development, or commercial information (including information  
25 implicating privacy rights of third parties), information otherwise generally  
26 unavailable to the public, or which may be privileged or otherwise protected from  
27 disclosure under state or federal statutes, court rules, case decisions, or common  
28 law. Accordingly, to expedite the flow of information, to facilitate the prompt

1 resolution of disputes over confidentiality of discovery materials, to adequately  
2 protect information the parties are entitled to keep confidential, to ensure that the  
3 parties are permitted reasonable necessary uses of such material in preparation for  
4 and in the conduct of trial, to address their handling at the end of the litigation, and  
5 serve the ends of justice, a protective order for such information is justified in this  
6 matter. It is the intent of the parties that information will not be designated as  
7 confidential for tactical reasons and that nothing be so designated without a good  
8 faith belief that it has been maintained in a confidential, non-public manner, and  
9 there is good cause why it should not be part of the public record of this case.

10 **III. PROTECTIVE ORDER**

11 **1. DEFINITIONS**

12 1.1 Action: *United States ex rel. Graham Mouw v. Kaiser Foundation*  
13 *Health Plan*, Case No. CV 14-08051, currently pending before the Honorable John  
14 A. Kronstadt in the United States District Court, Central District of California.

15 1.2 Challenging Party: a Party or Non-Party that challenges the  
16 designation of information or items under this Order.

17 1.3 “CONFIDENTIAL” Information or Items: information (regardless of  
18 how it is generated, stored or maintained) or tangible things that qualify for  
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the  
20 Good Cause Statement.

21 1.4 Counsel: Outside Counsel of Record and Kaiser Foundation Health  
22 Plan, Inc.’s (“Kaiser”) In-House Counsel (as well as their support staff).

23 1.5 Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 “CONFIDENTIAL.”

26 1.6 Disclosure or Discovery Material: all items or information, regardless  
27 of the medium or manner in which it is generated, stored, or maintained (including,  
28 among other things, testimony, transcripts, and tangible things), that are produced or

1 generated in disclosures or responses to discovery in this matter.

2 1.7 Expert: a person or firm with specialized knowledge or experience in  
3 a matter pertinent to the litigation who has been retained by a Party or its counsel to  
4 serve as an expert witness or as a consultant in this Action.

5 1.8 In-House Counsel: attorneys who are employees of a party to this  
6 Action. In-House Counsel does not include Outside Counsel of Record or any other  
7 outside counsel.

8 1.9 Non-Party: any natural person, partnership, corporation, association,  
9 or other legal entity not named as a Party to this action.

10 1.10 Outside Counsel of Record: attorneys who are not employees of a  
11 party to this Action but are retained to represent or advise a party to this Action and  
12 have appeared in this Action on behalf of that party or are affiliated with a law firm  
13 which has appeared on behalf of that party, and includes support staff.

14 1.11 Party: any party to this Action, including all of its officers, directors,  
15 employees, consultants, retained experts, and Outside Counsel of Record (and their  
16 support staffs).

17 1.12 Producing Party: a Party or Non-Party that produces Disclosure or  
18 Discovery Material in this Action.

19 1.13 Professional Vendors: persons or entities that provide litigation  
20 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
22 and their employees and subcontractors.

23 1.14 Protected Material: any Disclosure or Discovery Material that is  
24 designated as “CONFIDENTIAL.”

25 1.15 Receiving Party: a Party that receives Disclosure or Discovery  
26 Material from a Producing Party.

27 **2. SCOPE**

28 The protections conferred by this Stipulation and Order cover not only

1 Protected Material (as defined above), but also (1) any information copied or  
2 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
3 compilations of Protected Material; and (3) any testimony, conversations, or  
4 presentations by Parties or their Counsel that might reveal Protected Material.

5 Any use of Protected Material at trial shall be governed by the orders of the  
6 trial judge. This Order does not govern the use of Protected Material at trial.

7 This Order shall be a Qualified Protective Order (QPO) pursuant to the  
8 Health Insurance Portability and Accountability Act of 1966 (“HIPAA”), the Health  
9 Information Technology for Economic and Clinical Health Act of 2009 (the  
10 “HITECH Act”), and regulations adopted thereunder by the U.S. Department of  
11 Health and Human Services, 45 C.F.R. Parts 160, 162, and 164 (the “HIPAA  
12 Rules”), in accordance with and as defined by the HIPAA Rules, specifically 45  
13 C.F.R. section 164.512(e)(1)(ii)(B) and (v), whereby the parties are:

- 14 a. Prohibited from using or disclosing protected health information (PHI)  
15 (as defined by the HIPAA Rules) for any purpose other than  
16 conducting this litigation.
- 17 b. Required to securely destroy all copies of the PHI or to return them to  
18 the Producing Party at the conclusion of this litigation.
- 19 c. Permitted to file pleadings, discovery or other documents which  
20 include or reference PHI with the Court, subject to this Order.

### 21 **3. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations  
23 imposed by this Order shall remain in effect until a Designating Party agrees  
24 otherwise in writing or a court order otherwise directs. Final disposition shall be  
25 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
26 with or without prejudice; and (2) final judgment herein after the completion and  
27 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
28 including the time limits for filing any motions or applications for extension of time

1 pursuant to applicable law.

2 **4. DESIGNATING PROTECTED MATERIAL**

3 4.1 Exercise of Restraint and Care in Designating Material for Protection.

4 Each Party or Non-Party that designates information or items for protection under  
5 this Order must take care to limit any such designation to specific material that  
6 qualifies under the appropriate standards. The Designating Party must designate for  
7 protection only those parts of material, documents, items, or oral or written  
8 communications that qualify so that other portions of the material, documents,  
9 items, or communications for which protection is not warranted are not swept  
10 unjustifiably within the ambit of this Order.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations  
12 that are shown to be clearly unjustified or that have been made for an improper  
13 purpose (e.g., to unnecessarily encumber the case development process or to  
14 impose unnecessary expenses and burdens on other parties) may expose the  
15 Designating Party to sanctions.

16 If it comes to a Designating Party's attention that information or items that it  
17 designated for protection do not qualify for protection, that Designating Party must  
18 promptly notify all other Parties that it is withdrawing the inapplicable designation.

19 4.2 Manner and Timing of Designations. Except as otherwise provided in  
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
22 under this Order must be clearly so designated before the material is disclosed or  
23 produced.

24 Designation in conformity with this Order requires:

- 25 (a) for information in documentary form (e.g., paper or electronic  
26 documents, but excluding transcripts of depositions or other  
27 pretrial or trial proceedings), that the Producing Party affix at a  
28 minimum, the legend "CONFIDENTIAL" (hereinafter

1 “CONFIDENTIAL legend”), to each page that contains  
2 protected material. If only a portion or portions of the material  
3 on a page qualifies for protection, the Producing Party also must  
4 clearly identify the protected portion(s) (e.g., by making  
5 appropriate markings in the margins).

6 A Party or Non-Party that makes original documents available for inspection  
7 need not designate them for protection until after the inspecting Party has indicated  
8 which documents it would like copied and produced. During the inspection and  
9 before the designation, all of the material made available for inspection shall be  
10 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
11 documents it wants copied and produced, the Producing Party must determine  
12 which documents, or portions thereof, qualify for protection under this Order.  
13 Then, before producing the specified documents, the Producing Party must affix the  
14 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
15 portion or portions of the material on a page qualifies for protection, the Producing  
16 Party also must clearly identify the protected portion(s) (e.g., by making  
17 appropriate markings in the margins).

18 (b) for testimony given in depositions that the Designating Party  
19 identify the Disclosure or Discovery Material on the record,  
20 before the close of the deposition all protected testimony.

21 (c) for information produced in some form other than documentary  
22 and for any other tangible items, that the Producing Party affix  
23 in a prominent place on the exterior of the container or  
24 containers in which the information is stored the legend  
25 “CONFIDENTIAL.” If only a portion or portions of the  
26 information warrants protection, the Producing Party, to the  
27 extent practicable, shall identify the protected portion(s).

28 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent

1 failure to designate qualified information or items does not, standing alone, waive  
2 the Designating Party's right to secure protection under this Order for such material.  
3 Upon timely correction of a designation, the Receiving Party must make reasonable  
4 efforts to assure that the material is treated in accordance with the provisions of this  
5 Order.

6 **5. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 5.1 Timing of Challenges. Any Party or Non-Party may challenge a  
8 designation of confidentiality at any time that is consistent with the Court's  
9 Scheduling Order.

10 5.2 Meet and Confer. The Challenging Party shall initiate the dispute  
11 resolution process under Local Rule 37.1 et seq.

12 5.3 The burden of persuasion in any such challenge proceeding shall be on  
13 the Designating Party. Frivolous challenges, and those made for an improper  
14 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
15 parties) may expose the Challenging Party to sanctions. Unless the Designating  
16 Party has waived or withdrawn the confidentiality designation, all parties shall  
17 continue to afford the material in question the level of protection to which it is  
18 entitled under the Producing Party's designation until the Court rules on the  
19 challenge.

20 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

21 6.1 Basic Principles. A Receiving Party may use Protected Material that is  
22 disclosed or produced by another Party or by a Non-Party in connection with this  
23 Action only for prosecuting, defending, or attempting to settle this Action. Such  
24 Protected Material may be disclosed only to the categories of persons and under the  
25 conditions described in this Order. When the Action has been terminated, a  
26 Receiving Party must comply with the provisions of section 13 below (FINAL  
27 DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a



1 location and in a secure manner that ensures that access is limited to the persons  
2 authorized under this Order.

3 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
4 otherwise ordered by the court or permitted in writing by the Designating Party, a  
5 Receiving Party may disclose any information or item designated  
6 “CONFIDENTIAL” only to:

- 7 (a) the Receiving Party’s Outside Counsel of Record in this Action,  
8 as well as associated personnel necessary to assist Outside  
9 Counsel in the Action, such as litigation assistants, paralegals,  
10 and secretarial or other clerical or support personnel, to whom it  
11 is reasonably necessary to disclose the information for this  
12 Action;
- 13 (b) the officers, directors, and employees (including In-House  
14 Counsel) of the Receiving Party to whom disclosure is  
15 reasonably necessary for this Action;
- 16 (c) Experts (as defined in this Order), including principals and  
17 employees of the firm with which Experts are associated, of the  
18 Receiving Party to whom disclosure is reasonably necessary for  
19 this Action and who have signed the “Acknowledgment and  
20 Agreement to Be Bound” (Exhibit A);
- 21 (d) the court and its personnel, or another court of competent  
22 jurisdiction in a proceeding by a party made in connection with  
23 this Action (e.g., a subpoena or similar discovery request made  
24 to obtain Discovery Material for use in this Action);
- 25 (e) court reporters and their staff;
- 26 (f) professional jury or trial consultants, mock jurors, and  
27 Professional Vendors to whom disclosure is reasonably  
28 necessary for this Action and who have signed the

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- “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- (g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;
  - (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order;
  - (i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions; and
  - (j) litigation support services, including outside vendors or companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, retained by a Party for the purpose of assisting that party in this Action.

**7. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
PRODUCED IN OTHER LITIGATION**

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

- 1 (a) promptly notify in writing the Designating Party. Such  
2 notification shall include a copy of the subpoena or court order;
- 3 (b) promptly notify in writing the party who caused the subpoena or  
4 order to issue in the other litigation that some or all of the  
5 material covered by the subpoena or order is subject to this  
6 Protective Order. Such notification shall include a copy of this  
7 Stipulated Protective Order; and
- 8 (c) cooperate with respect to all reasonable procedures sought to be  
9 pursued by the Designating Party whose Protected Material may  
10 be affected.

11 If the Designating Party timely seeks a protective order, the Party served with  
12 the subpoena or court order shall not produce any information designated in this  
13 action as “CONFIDENTIAL” before a determination by the court from which the  
14 subpoena or order issued, unless the Party has obtained the Designating Party’s  
15 permission. The Designating Party shall bear the burden and expense of seeking  
16 protection in that court of its confidential material and nothing in these provisions  
17 should be construed as authorizing or encouraging a Receiving Party in this Action  
18 to disobey a lawful directive from another court.

19 **8. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
20 **PRODUCED IN THIS LITIGATION**

- 21 (a) The terms of this Order are applicable to information produced  
22 by a Non-Party in this Action and designated as  
23 “CONFIDENTIAL.” Such information produced by Non-  
24 Parties in connection with this litigation is protected by the  
25 remedies and relief provided by this Order. Nothing in these  
26 provisions should be construed as prohibiting a Non-Party from  
27 seeking additional protections.
- 28 (b) In the event that a Party is required, by a valid discovery

1 request, to produce a Non-Party's confidential information in its  
2 possession, and the Party is subject to an agreement with the  
3 Non-Party not to produce the Non-Party's confidential  
4 information, then the Party shall:

- 5 (1) promptly notify in writing the Requesting Party and the  
6 Non-Party that some or all of the information requested is  
7 subject to a confidentiality agreement with a Non-Party;
- 8 (2) promptly provide the Non-Party with a copy of the  
9 Stipulated Protective Order in this Action, the relevant  
10 discovery request(s), and a reasonably specific description  
11 of the information requested; and
- 12 (3) make the information requested available for inspection  
13 by the Non-Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this court  
15 within 14 days of receiving the notice and accompanying  
16 information, the Receiving Party may produce the Non-Party's  
17 confidential information responsive to the discovery request. If  
18 the Non-Party timely seeks a protective order, the Receiving  
19 Party shall not produce any information in its possession or  
20 control that is subject to the confidentiality agreement with the  
21 Non-Party before a determination by the court. Absent a court  
22 order to the contrary, the Non-Party shall bear the burden and  
23 expense of seeking protection in this court of its Protected  
24 Material.

25 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED**  
26 **MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
2 writing the Designating Party of the unauthorized disclosures, (b) use its best  
3 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
4 person or persons to whom unauthorized disclosures were made of all the terms of  
5 this Order, and (d) request such person or persons to execute the “Acknowledgment  
6 and Agreement to Be Bound” that is attached hereto as Exhibit A.

7 **10. INADVERTENT PRODUCTION OF PRIVILEGED OR**  
8 **OTHERWISE PROTECTED MATERIAL**

9 When a Producing Party gives notice to Receiving Parties that certain  
10 inadvertently produced material is subject to a claim of privilege or other  
11 protection, the obligations of the Receiving Parties are those set forth in Federal  
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
13 whatever procedure may be established in an e-discovery order that provides for  
14 production without prior privilege review. Pursuant to Federal Rule of Evidence  
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
16 of a communication or information covered by the attorney-client privilege or work  
17 product protection, the parties may incorporate their agreement in the stipulated  
18 protective order submitted to the court.

19 **11. MISCELLANEOUS**

20 11.1 Right to Further Relief. Nothing in this Order abridges the right of any  
21 person to seek its modification by the Court in the future.

22 11.2 Right to Assert Other Objections. By stipulating to the entry of this  
23 Protective Order no Party waives any right it otherwise would have to object to  
24 disclosing or producing any information or item on any ground not addressed in this  
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
26 ground to use in evidence of any of the material covered by this Protective Order.

27 11.3 Filing Protected Material. A Party that seeks to file under seal any  
28 Protected Material must comply with Civil Local Rule 79-5. Protected Material

1 may only be filed under seal pursuant to a court order authorizing the sealing of the  
2 specific Protected Material at issue. If a Party's request to file Protected Material  
3 under seal is denied by the court, then the Receiving Party may file the information  
4 in the public record unless otherwise instructed by the court.

## 5 **12. FINAL DISPOSITION**

6 After the final disposition of this Action, as defined in paragraph 4, within 60  
7 days of a written request by the Designating Party, each Receiving Party must  
8 return all Protected Material to the Producing Party or destroy such material. As  
9 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
10 compilations, summaries, and any other format reproducing or capturing any of the  
11 Protected Material. Whether the Protected Material is returned or destroyed, the  
12 Receiving Party must submit a written certification to the Producing Party (and, if  
13 not the same person or entity, to the Designating Party) by the 60 day deadline that  
14 (1) identifies (by category, where appropriate) all the Protected Material that was  
15 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
16 copies, abstracts, compilations, summaries or any other format reproducing or  
17 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
18 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
19 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
20 and trial exhibits, expert reports, attorney work product, and consultant and expert  
21 work product, even if such materials contain Protected Material. Any such archival  
22 copies that contain or constitute Protected Material remain subject to this Protective  
23 Order as set forth in Section 4 (DURATION).

## 24 **13. SANCTIONS**

25 Any violation of this order may be punished by any and all appropriate  
26 measures including, without limitation, contempt proceedings and/or monetary  
27 sanctions.  
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2

3 Dated: January 22, 2016 GLANCY PRONGAY & MURRAY LLP

4

5 By: s/ Peter A. Binkow  
6 Peter A. Binkow  
7 Kevin F. Ruf  
8 Joshua L. Crowell

9 Attorneys for Relator  
10 GRAHAM MOUW

11

12 Dated: January 22, 2016 CROWELL & MORING LLP

13

14 By: s/ David W. O'Brien  
15 David W. O'Brien  
16 Nimrod Haim Aviad  
17 Shannon Barnard

18 Attorneys for Defendant  
19 KAISER FOUNDATION HEALTH PLAN,  
20 INC.

21

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23

24 DATED: January 26, 2016



25

Hon. Alicia G. Rosenberg

26

United States Magistrate Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name],  
4 of \_\_\_\_\_ [print or type full address], declare under penalty  
5 of perjury that I have read in its entirety and understand the Stipulated Protective  
6 Order that was issued by the United States District Court for the Central District of  
7 California on [date] in the case of United States ex rel. Graham Mouw v. Kaiser  
8 Foundation Health Plan, Case No. CV 14-08051-JAK (AGR<sub>x</sub>). I agree to comply  
9 with and to be bound by all the terms of this Stipulated Protective Order and I  
10 understand and acknowledge that failure to so comply could expose me to sanctions  
11 and punishment in the nature of contempt. I solemnly promise that I will not  
12 disclose in any manner any information or item that is subject to this Stipulated  
13 Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court  
16 for the Central District of California for the purpose of enforcing the terms of this  
17 Stipulated Protective Order, even if such enforcement proceedings occur after  
18 termination of this action. I hereby appoint \_\_\_\_\_ [print] or  
19 type full name] of \_\_\_\_\_ [print or type full  
20 address and telephone number] as my California agent for service of process in  
21 connection with this action or any proceedings related to enforcement of this  
22 Stipulated Protective Order.

23 Date: \_\_\_\_\_

24 City and State where sworn and signed: \_\_\_\_\_

25  
26 Printed Name: \_\_\_\_\_

27  
28 Signature: \_\_\_\_\_