

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

JAMES HARRAWAY  
Plaintiff,  
v.  
FRESENIUS MEDICAL CARE  
HOLDINGS, INC. dba FRESENIUS  
MEDICAL CARE NORTH AMERICA, a  
New York corporation,  
Defendant.  
AND RELATED COUNTERCLAIMS

Case No. 2:14-cv-09469-BRO-JPR  
**PROTECTIVE ORDER**  
  
Judge: Hon. Jean. P. Rosenbluth

1 Defendant and counterclaimant Fresenius Medical Care Holdings, Inc. dba  
2 Fresenius Medical Care North America (“FMCNA”), proposes the following Protective  
3 Order for designation of discovery that may result in the disclosure of highly sensitive  
4 and confidential information. FMCNA believes that this confidential information  
5 includes sensitive sales and other financial information, sensitive market studies and  
6 strategy information, sensitive information regarding the design, structure, function and  
7 method of operation of FMCNA’s products and other sensitive proprietary information.  
8 The interest of the party producing such information in restricting the disclosure and use  
9 of its confidential information described above far outweighs the interest of the public in  
10 having access to such information. Good cause accordingly exists for entry of this  
11 Protective Order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure in order  
12 to protect against improper disclosure or use of confidential information produced or  
13 disclosed in this case.

14 Based on the reasons stated above, and good cause appearing, IT IS HEREBY  
15 ORDERED as follows:

16 **I. CLASSIFICATION OF INFORMATION**

17 1. “CONFIDENTIAL INFORMATION” means information, documents,  
18 or things (including transcripts) that (1) have not been made public, and (2) the  
19 designating party reasonably and in good faith believes contains or comprises trade  
20 secrets or other confidential research, development, commercial, or private information  
21 or documents.

22 **II. PRODUCING AND DESIGNATING INFORMATION**

23 2. Any party to this action may designate anything as “CONFIDENTIAL  
24 INFORMATION” if it has a good faith belief that qualifies under Paragraph 1. Any  
25 non-party producing information in this action may so designate such materials pursuant  
26 to Paragraphs 21-23 below. Any information produced or disclosed in this action (in  
27 pretrial discovery, as a deposition transcript or exhibit, in a pleading or otherwise)  
28 deemed to contain or constitute CONFIDENTIAL INFORMATION shall be so

1 designated by any party to this action, or any other supplier of that information, (1) in  
2 writing by typing, stamping, or affixing conspicuously on its face (in such a manner as  
3 will not interfere with the legibility thereof) "CONFIDENTIAL INFORMATION" at  
4 the time of production or service thereof, or (2) orally on the record at a deposition or  
5 conference. Oral notice shall be effective only for those parties in attendance personally  
6 or by counsel, or for those parties who receive a transcript containing or marked with a  
7 confidentiality designation. The designating party shall use due care to designate only  
8 information that truly merits such designation.

9       3. The introduction of any CONFIDENTIAL INFORMATION into open  
10 court during the trial or any hearing in this matter shall be governed by pertinent local  
11 rules of the Court, future orders of the Court or by stipulation between the parties.

12       **A. Production of Documents and Things**

13       4. The designating party shall mark each affected document or thing with a  
14 legend stating "CONFIDENTIAL INFORMATION" as appropriate, or a comparable  
15 notice. Where a document consists of more than one page, at least the first page and  
16 each page on which confidential information appears shall be so marked. This provision  
17 shall not apply where it is impractical or infeasible to mark the affected document or  
18 thing such as in the case of an original that cannot be readily copied. In the event it is  
19 impractical or infeasible to mark an affected document or thing, the designating party  
20 shall provide separate written notice.

21       5. If a party inadvertently fails to mark a document that contains confidential  
22 information with the appropriate designation, it may later apply such a designation by  
23 providing counsel for each other party written notice of the proper designation for each  
24 affected document or thing. For purposes of this provision, oral notice recorded by a  
25 court reporter shall constitute written notice for any party in attendance personally or by  
26 counsel, or who receives a transcript containing such a notice. Upon receiving such a  
27 notice, each party shall treat the affected documents or things, and all copies thereof, as  
28 designated as the notice states, and each receiving party shall make a reasonable effort to

1 (1) prevent improper use or disclosure of such information and (2) obtain the return of  
2 such information that it disclosed to any person not authorized to receive such  
3 designated information, subject to its right to contest any designation in accordance with  
4 Paragraph 20 below, and subject to the exceptions in Paragraph 16 below regarding use  
5 or disclosure of information before receiving notice of any designation. The designating  
6 party shall also provide a replacement, marked pursuant to Paragraph 4 above, for each  
7 affected document and thing. After receipt of a marked replacement, and upon written  
8 request of the designating party, the receiving party shall certify in writing to counsel of  
9 the designating party that the receiving party has returned or destroyed, at its option,  
10 every affected unmarked document and thing and all copies thereof.

11 6. Until seven (7) days after receipt, the receiving party shall treat all  
12 documents and things received from a producing party as being CONFIDENTIAL  
13 INFORMATION, regardless of how such documents or things are marked. After that  
14 seven-day period, however, documents and things shall be treated in accordance with  
15 how they are actually designated, if at all, under Paragraphs 1-5 above.

16 **B. Production for Inspection**

17 7. Any entity that produces documents or things for inspection and copying  
18 may require within 30 days of the production, inspection, or copying, by written notice  
19 to the receiving party that, with respect to each document or thing, the document or  
20 thing shall be (i) treated as if it were designated as “CONFIDENTIAL  
21 INFORMATION” and (ii) reviewed only by persons whom this Protective Order  
22 authorizes to receive CONFIDENTIAL INFORMATION, and any copies, summaries,  
23 excerpts, compilations, notes, or other information obtained or generated during the  
24 inspection of the document or thing shall be treated as CONFIDENTIAL  
25 INFORMATION. After designation by the producing party, the documents and things  
26 shall be treated in accordance with the designation, if any, of the producing party.

27 **C. Depositions**

28 8. A party may designate deposition transcripts and exhibits as

1 “CONFIDENTIAL INFORMATION” (a) orally on the record during the deposition;  
2 or (b) by notifying all other parties in writing within 30 days of receiving the transcript of  
3 the exhibits, transcript, or portions thereof, that contain CONFIDENTIAL  
4 INFORMATION.

5 9. Until thirty (30) days after receiving a deposition transcript, each party shall  
6 treat the entirety of each deposition transcript, all information disclosed therein, and  
7 each exhibit thereto as CONFIDENTIAL INFORMATION unless before the  
8 deposition, the exhibit was properly treated as not having any CONFIDENTIAL  
9 INFORMATION. After the thirty (30) day period, however, deposition transcripts, all  
10 information disclosed therein and each exhibit thereto, shall be treated in accordance  
11 with how they are actually designated.

#### 12 **D. Redactions**

13 10. Any producing party may redact material from documents and things it  
14 produces, including matter that the producing party claims is subject to the attorney-  
15 client privilege, work product immunity or other privilege or immunity. The producing  
16 party shall mark each document or thing where matter has been redacted with a legend  
17 stating “REDACTED FOR PRIVILEGE” or a comparable descriptive notice. Where a  
18 document consists of more than one page, at least the first page and each page on which  
19 information has been redacted shall be so marked. The producing party shall preserve  
20 an unredacted version of each document. This provision shall not affect any obligation  
21 to provide a log of information redacted or otherwise withheld on the basis of the  
22 attorney-client privilege, work product immunity or other privilege or immunity.

### 23 **III. LIMITATIONS ON USING AND DISCLOSING INFORMATION**

#### 24 **A. Limitations on Use and Disclosure**

25 11. All CONFIDENTIAL INFORMATION produced or exchanged during  
26 this litigation shall not be disclosed or used except for the purpose of conducting this  
27 litigation, including any appeal resulting therefrom, and not for any other business,  
28 commercial or other purpose whatsoever. As an example only, such information shall

1 not be used by a recipient for any commercial purpose, for filing, prosecuting or  
2 opposing any patent application (of any type) or a similar request for protection, for  
3 patent reissue or reexamination request or for developing a product.

4 12. Anything designated CONFIDENTIAL INFORMATION shall not be  
5 disclosed or made available to any person or entity other than:

6 a. Attorneys of Fish & Richardson, P.C., including necessary clerical  
7 and support personnel, including third-party litigation support personnel (for example,  
8 paralegals, data entry personnel, copy services, visual aid providers or jury consultants)  
9 who are assisting such attorneys. Any outside attorney or law firm other than those  
10 indicated above may be added to this Protective Order as counsel of record for a party  
11 upon ten (10) days advance written notice to all other parties, but shall not be added to  
12 the Protective Order nor entitled to access to any CONFIDENTIAL INFORMATION  
13 should any other party object in writing to the designation of counsel during such ten  
14 (10) day period; any such objection shall be resolved by the Court if not resolved among  
15 the parties;

16 b. Plaintiff and counterclaim defendant Mr. James Harraway, and Stacy  
17 Blasberg and Jay Morris, in-house counsel for FMCNA, along with their respective in-  
18 house paralegal and clerical support staff who are directly involved in the litigation,  
19 subject to the following restrictions:

20 (i) Notwithstanding the foregoing, the in-house counsel  
21 identified in the preceding Paragraph 12(b) shall not have access to view or  
22 search any document database storing documents produced by the  
23 opposing party or any non-party in this action;

24 c. Outside experts, consultants, and mock jurors who are specifically  
25 retained by a party to this action for purposes of this litigation and who are not  
26 otherwise currently employed by (1) a party, or (2) any predecessor, parent or affiliated  
27 company of a party, and all necessary clerical and support personnel who assist such  
28 experts or consultants, subject to the provisions regarding designating persons under this

1 Protective Order in Paragraph 18 below;

2 d. The Court and any persons the Court employs whose duties require  
3 access to the information, including jurors and court reporters; and

4 e. Officers before whom a deposition or other testimony is taken  
5 (including without limitation, stenographic reporters and videographers) and necessary  
6 clerical and support personnel who are assisting such officers, who are provided a copy  
7 of this Protective Order and advised that confidential information disclosed to them may  
8 not be used in any manner other than with respect to this action.

9 **B. Filing Under Seal**

10 13. Any discovery related issues filed with or submitted to the Court (including  
11 without limitation, pleadings, motions, transcripts or portions thereof) that comprises,  
12 contains, discloses, reproduces or paraphrases any information that is designated  
13 “CONFIDENTIAL INFORMATION” shall be filed under seal in accordance with the  
14 Civil Case Procedures of Judge Rosenbluth and the Local Rules of this Court.

15 14. No document shall be filed under seal unless counsel secures a court order  
16 allowing the filing of a document, or portion thereof, under seal. An application to file a  
17 document under seal shall be served on opposing counsel and on all unrepresented  
18 parties personally. If opposing counsel or an unrepresented party wishes to oppose the  
19 application, he/she must contact the Court Room Deputy of the judge who will rule on  
20 the application to notify the Court that an opposition to the application will be filed.

21 **C. Depositions**

22 15. No person shall attend portions of depositions during which information  
23 designated as “CONFIDENTIAL INFORMATION” is disclosed unless such person is  
24 an authorized recipient of such information under this Protective Order. If, during a  
25 deposition, the response to a question would require the disclosure of  
26 CONFIDENTIAL INFORMATION, the witness may refuse to answer or complete his  
27 or her answer, or any party that designated the information as confidential may instruct  
28 the witness not to answer or complete his or her answer, until any persons not

1 authorized to receive that information have left the room. If the persons not authorized  
2 to receive confidential information refuse to leave the room, the deposition shall  
3 continue as to non-confidential matters only or may be adjourned, at the option of the  
4 examining party. Each party reserves its right to demand the suspension of the taking of  
5 the deposition under Rule 30(d).

6 **D. Exceptions**

7 16. Nothing in this Protective Order shall prohibit or otherwise restrict the use  
8 or disclosure of information, documents or things, if, at the time of such use or  
9 disclosure:

10 a. A party is merely using or disclosing its own information. A party  
11 may freely use and disclose its own CONFIDENTIAL INFORMATION without  
12 restriction;

13 b. The Court has ordered such use or disclosure, or the Court has  
14 ordered the relevant information undesignated. If the Court orders such use or  
15 disclosure, then unless the Court orders otherwise, the information, and any entity  
16 receiving any such information, shall otherwise be subject to this Protective Order;

17 c. Each party that produced the information or designated the  
18 information as "CONFIDENTIAL INFORMATION" has consented in writing to such  
19 use or disclosure;

20 d. The information is used or disclosed in the examination, at a  
21 deposition hearing, or trial, of any current or former officer, director, employee, agent,  
22 expert or consultant of the party whose information is used or disclosed, so long as that  
23 person had access or knowledge of the information;

24 e. The person or entity receiving the information wrote, was the source  
25 for, or lawfully previously received that information. Counsel may examine a witness in  
26 a good faith effort to determine whether that person had access to or knowledge of the  
27 information, provided that such examination be undertaken without the disclosure of  
28 the substance of such confidential information to the witness unless and until counsel



1 has determined, in good faith, from such examination that the witness did, in fact, have  
2 lawful access to such information prior to this litigation;

3 f. The information (1) was part of the public domain or publicly  
4 available when it was produced, or (2) becomes part of the public domain or publicly  
5 available through no act, omission or fault of any receiving party or its counsel or agents,  
6 and through no unlawful or improper act of any other person;

7 g. The information is or was independently developed, prior to receipt  
8 in this litigation, by the party wishing to use or disclose the information; or

9 h. The information (1) is or was in the lawful possession of the party  
10 wishing to use or disclose the information, and (2) was not acquired under any obligation  
11 of confidentiality to the designating party, nor through the illegal act of any person.

12 17. Notwithstanding any provision of this Protective Order, nothing in this  
13 Protective Order shall prohibit or otherwise restrict counsel from referring to in a very  
14 general way, relying on, or evaluating CONFIDENTIAL INFORMATION in the  
15 course of advising a party client with respect to this litigation, provided, however, that  
16 counsel shall not disclose the specific substance or content of any CONFIDENTIAL  
17 INFORMATION if such disclosure would violate this Protective Order.

18 **IV. DESIGNATING PERSONS UNDER THE PROTECTIVE ORDER**

19 18. The parties may in good faith disclose “CONFIDENTIAL  
20 INFORMATION” to mock jurors and jury consultants under the Protective Order  
21 provided such persons (i) execute a general confidentiality agreement; (ii) are not actually  
22 provided any copies or excerpts of materials designated “CONFIDENTIAL  
23 INFORMATION”; and (iii) return all notes or testing instruments upon conclusion of  
24 the exercise. Confidential Business Information designated “CONFIDENTIAL  
25 INFORMATION” shall not otherwise be disclosed by the receiving party to its  
26 independent technical, damages, or other consultants retained for purposes of this  
27 litigation and their necessary employees until the procedures in subparagraphs (a)  
28 through (d) are followed:

1 a. At least ten (10) days before the designated Confidential Information  
2 is to be disclosed to any independent expert or consultant or employees thereof, the  
3 party wishing to disclose such information shall provide to the opposing party:

4 (i) The person's name, business address, present employer  
5 and a current copy of the person's curriculum vitae;

6 (ii) The names of any employees who will be assisting the  
7 person; and

8 (iii) An agreement, in the form attached hereto as Exhibit  
9 A, from each person and each employee identified in Paragraph (ii) that  
10 they have read this Protective Order and agree to be bound by all of the  
11 provisions hereof and to be subject to the jurisdiction of this Court for  
12 enforcement.

13 b. Unless counsel of record for any party notifies proposing counsel of  
14 its objection to any person proposed hereunder within ten (10) days after receipt of the  
15 information referred to in Paragraph 18(a) above, such person(s) shall thereafter be  
16 entitled to receive CONFIDENTIAL INFORMATION pursuant to the provisions of  
17 this Protective Order.

18 c. Should counsel of record notify proposing counsel of its objection  
19 to any person proposed hereunder, the parties shall meet and confer within 10 days of  
20 any such objection. If the meet and confer is unsuccessful, the party objecting to the  
21 disclosure to the expert will have 21 days from the date of its written objection to file a  
22 motion, in compliance with Local Rule 37 if applicable, seeking relief from the Court,  
23 provided, however, that no information designated as "CONFIDENTIAL  
24 INFORMATION" may be disclosed to any person as to whom an objection has been  
25 made until the motion is decided by the Court or by an appellate court, should appellate  
26 review be sought. If relief is not sought from the Court within 21 days following the  
27 written objection, the objection shall be deemed withdrawn. In any such proceeding, the  
28 party opposing disclosure to the expert shall bear the burden of proving that the risk of

1 harm that the disclosure would entail (under the safeguards proposed) outweighs the  
2 Receiving Party's need to disclose the protected material to its expert.

3 d. Each party agrees that it will not contact any consultant or employee  
4 thereof of the opposing party whose identity is revealed under this paragraph, provided,  
5 however, that the parties may take discovery of "any witness who has been identified as  
6 an expert whose opinions may be presented at trial." Fed. R. Civ. P. 26(b)(4).

7 19. Counsel for any Receiving Party who discloses information designated  
8 "CONFIDENTIAL INFORMATION" to any person who is authorized to receive  
9 such information, shall be responsible for obtaining and keeping a copy of an executed  
10 agreement for each such person, as required by Paragraph 18 above.

11 **V. DISPUTES REGARDING DESIGNATIONS**

12 20. Any party to this action may contest at any time the designation of anything  
13 as "CONFIDENTIAL INFORMATION" by giving the designating party written  
14 notice that identifies the relevant designated information and states in reasonable detail  
15 the reasons why the information should not be so designated. Any parties in  
16 disagreement about such designations shall meet and confer in compliance with Local  
17 Rule 37 to attempt to resolve their disagreement. If those parties cannot resolve their  
18 disagreement within ten (10) days after a party contests the designation, any party may  
19 thereafter petition the Court to resolve the matter within 30 days after a party contests  
20 designation. If such an objection or petition is made, such information shall be treated  
21 according to the designation that the designating party gives it until the issue is resolved  
22 in writing by the parties or the petition is decided by the Court or an appellate court,  
23 should appellate review be sought. If no petition is made to the Court within 30 days  
24 after a party contests designation, the challenge will be deemed withdrawn.

25 **VI. THIRD PARTIES**

26 21. This Protective Order applies to all information that a non-party discloses  
27 in connection with this litigation. All information that any non-party designates as  
28 "CONFIDENTIAL INFORMATION" shall be treated as such in accordance with the

1 terms of this Protective Order, subject to any party's rights to contest any designation in  
2 accordance with Paragraph 20 above.

3         22. If any person or entity is subpoenaed, ordered by a court of competent  
4 jurisdiction, or otherwise legally required to produce information that another entity  
5 designated "CONFIDENTIAL INFORMATION" in this action, the person or entity  
6 receiving the request or order shall (a) inform each person or entity that sent such  
7 request or order that the information is subject to this Protective Order, (b) immediately  
8 notify each designating party of the existence and general substance of each such order  
9 or request, (c) promptly furnish each designating party with a copy of the document(s) it  
10 received that memorialized the request or order, and (d) not interfere with any  
11 designating party's response or objection to any such order or request.

12         23. Nothing in this Protective Order requires any person or entity to contest,  
13 appeal, or violate a subpoena, legal process, or court order. If the designating party  
14 wishes to contest any such request or order, it shall have the burden of doing so. The  
15 entity receiving the subpoena, process, or order shall be entitled to comply with it unless  
16 (a) it is quashed or modified in a way that does not require such compliance, or (b) (i) it  
17 need not be complied with yet, and (ii) the entity receives notice, within ten (10) days  
18 after it notifies each designating party of the existence of the request or order, that an  
19 entity has or will contest the request or order.

20 **VII. WAIVER AND INADVERTANT DISCLOSURES**

21         24. If a producing party inadvertently discloses information without  
22 designating such information as "CONFIDENTIAL INFORMATION," that disclosure  
23 shall not be deemed a waiver of confidentiality with regard to that information, or similar  
24 or related information.

25         25. Neither the existence of this Protective Order, nor the designation of  
26 anything as "CONFIDENTIAL INFORMATION" shall, in and of itself, raise any  
27 inference as to whether the designated information is confidential.

28         **A. Privilege or Immunity**

1           26. Nothing in this Protective Order shall be deemed to waive any applicable  
2 privilege or immunity, or to limit the relief available to a party claiming that it  
3 inadvertently disclosed information subject to any privilege or immunity. Nothing in  
4 this Protective Order shall require disclosure of information that is protected by the  
5 attorney-client privilege, work product immunity, or other privilege or immunity.

6           27. If any party claims that it has inadvertently disclosed information subject to  
7 the attorney-client privilege, work product immunity, a legal prohibition against  
8 disclosure, or other privilege or immunity, such disclosure shall not constitute a waiver  
9 of the applicable privilege or legal prohibition against disclosure if the producing party  
10 provides written notice of the inadvertent disclosure to each receiving party within  
11 twenty (20) days of becoming aware of the inadvertent disclosure. The parties reserve all  
12 rights to seek the return or destruction of all such information and anything relating to  
13 such information (including, without limitation, notes or work product), and to preclude  
14 the further use or disclosure thereof.

15           28. If written notice of inadvertent disclosure is provided within 20 days of the  
16 party becoming aware of the relevant inadvertent disclosure, then the parties will comply  
17 with the provisions of Federal Rule of Civil Procedure 26(b)(5)(B). If any receiving party  
18 disputes that any such information is subject to such privilege or immunity, or otherwise  
19 disagrees about the return, disclosure (e.g., if the receiving party disputes whether the  
20 disclosure was inadvertent), or use of any such information, then that party and the party  
21 claiming inadvertent disclosure shall meet and confer in good faith to attempt to resolve  
22 their disagreement. If those parties cannot resolve their disagreement within ten (10) day  
23 s after receipt of such notice, then any of those parties may thereafter petition the Court  
24 in compliance with Local Rule 37 to resolve the matter. The party seeking to designate  
25 the information as subject to privilege or immunity shall have the burden of proving that  
26 the information is subject to privilege or immunity and, if relying on the rule against  
27 inadvertent waiver under this Protective Order, that the disclosure was inadvertent and  
28 that written notice was provided within the required 20 days. When written notice of

1 inadvertent disclosure is provided within 20 days of the party becoming aware of the  
2 inadvertent disclosure, the Court will rule on claims of privilege or immunity without  
3 regard to the fact that such information has been disclosed or used.

4 **VIII. VIOLATION**

5         29. Each person, entity, or third-party who has signed this Protective Order  
6 that receives any information designated as “CONFIDENTIAL INFORMATION”  
7 agrees to be subject to the jurisdiction of this Court for the purpose of any proceeding  
8 relating to the performance under, compliance with, or violation of this Protective  
9 Order, even after the conclusion of this litigation.

10         30. Each party shall be entitled to all remedies existing under law and equity if  
11 any information that is designated (at the time of use or disclosure) “CONFIDENTIAL  
12 INFORMATION” is used or disclosed in violation of this Protective Order, or if any  
13 term of this Protective Order is violated in any other way. It shall not be a defense to a  
14 request for injunctive relief that the aggrieved party possesses an adequate remedy at law.

15         31. If any information that is designated (at the time of use or disclosure)  
16 “CONFIDENTIAL INFORMATION” is used or disclosed other than in the manner  
17 authorized by this Protective Order, then the party responsible for such use or disclosure  
18 shall immediately disclose such use or disclosure to counsel of record and each entity  
19 that supplied or designated the affected information and, without prejudice to other  
20 rights and remedies available to the supplier or designator, shall make every effort to  
21 obtain the return of such information and prevent further improper use or disclosure of  
22 such information. Such disclosure shall include: (a) a description of the confidential  
23 information used or disclosed (with Bates numbers of any documents involved, if  
24 known); (b) the date and nature of the use and disclosure; (c) the identity of the  
25 person(s) who made such use or disclosure and to whom the confidential information  
26 was disclosed; and (d) a description of the efforts taken to comply with the provisions of  
27 this paragraph.

28         32. Except as provided for elsewhere in this Protective Order, any disclosure

1 or use by any person or entity of any inadvertently disclosed or inadvertently non-  
2 designated information shall not be deemed a violation of this Protective Order if such  
3 disclosure or use occurs before that person or entity receives written notice of that  
4 inadvertent disclosure or non-designation. For purposes of this provision, oral notice  
5 recorded by a court reporter shall constitute written notice.

6 **IX. CONCLUSION OF LITIGATION**

7 33. Absent a court order or written permission of the disclosing and  
8 designating party or parties, and unless otherwise stated in another provision in this  
9 Protective Order, all provisions of this Protective Order that restrict the disclosure or  
10 use of information shall continue to be binding after the conclusion of this action.

11 34. Upon written request by the disclosing or designating party or parties after  
12 the conclusion of this litigation and all appeals therefrom, and absent a court order to  
13 the contrary (a) all documents or things (including transcripts) produced or exchanged in  
14 this litigation, and all copies thereof, shall be returned to the producing party or  
15 destroyed; and (b) anything (including, without limitation, exhibits and attorney work  
16 product) that contains or comprises information designated as “CONFIDENTIAL  
17 INFORMATION” shall be returned to the producing party or destroyed. Each party or  
18 entity (including, without limitation, court reporters) that received or has any such  
19 documents or things, or copies thereof, shall certify in writing to counsel for the  
20 producing party that it returned or destroyed, at its option, every such document and  
21 thing, and all copies, summaries and abstracts thereof, in its possession, custody or  
22 control.

23 35. Notwithstanding Paragraph 34 above, each firm having counsel of record  
24 may retain for archival purposes one copy of all pleadings, papers filed with the Court,  
25 written discovery requests, deposition transcripts, transcripts of court proceedings,  
26 correspondence and work product, including portions designated as  
27 “CONFIDENTIAL INFORMATION,” subject to the continuing obligations of all  
28 other provisions of this Protective Order, and provided that nothing in said archival

1 copy shall be disclosed to anyone other than that counsel's partners, associates or  
2 employees.

3 36. Plaintiff in the above-titled case, who is currently unrepresented by counsel,  
4 is subject to the requirements of Paragraph 34. To the extent Plaintiff remains  
5 unrepresented by counsel through the termination of this case, Plaintiff shall have the  
6 ability, upon reasonable notice, to request inspection of documents maintained pursuant  
7 to Paragraph 35 by counsel for any other party. If such a request is made, counsel  
8 receiving the request shall make available to Plaintiff within a reasonable time and at  
9 counsel's offices closest to Plaintiff's residence, documents retained pursuant to  
10 Paragraph 35. During any such inspection, Plaintiff may not copy any  
11 "CONFIDENTIAL INFORMATION" and counsel may monitor Plaintiff's access to  
12 any such "CONFIDENTIAL INFORMATION." Counsel need only maintain  
13 documents and records related to this litigation, including "CONFIDENTIAL  
14 INFORMATION" pursuant to Paragraph 35 as long as they would in the normal course  
15 of business.

16 37. The Court retains jurisdiction FOR A PERIOD OF TWO YEARS  
17 FOLLOWING the final disposition of this litigation to enforce this Protective Order  
18 and to make such amendments, modifications, deletions and additions to this Protective  
19 Order as the Court may from time to time deem appropriate. The parties hereto reserve  
20 all rights to apply to the Court at any time, before or after final disposition, for an order:  
21 (a) modifying this Protective Order; (b) seeking further protection against discovery or  
22 other use of confidential information, or documents, transcripts or other materials  
23 reflecting confidential information; or (c) seeking further production, discovery,  
24 disclosure or use of claimed confidential information, or documents, transcripts or other  
25 materials reflecting confidential information.

26 **X. AMENDMENTS**

27 38. Changes or exceptions to this Protective Order may be made only by  
28 written agreement of the parties subject to court approval, or by court order.



1           39. This Protective Order does not abridge and is without prejudice to the  
2 rights of a party (a) to oppose or object to the disclosure, production, use or admissibility  
3 of anything, or to refuse to disclose or produce anything based on any available legal  
4 grounds or objections, (b) to modify or seek relief from this Protective Order, (c) to seek  
5 judicial review or other appropriate action regarding any Court ruling concerning  
6 information that is or was designated “CONFIDENTIAL INFORMATION,” or (d) to  
7 seek any additional protection that the party deems appropriate.

8 **XI. SOURCE CODE**

9           40. To the extent any party, or third party to this litigation, produces computer  
10 source code that it in good faith believes should be subject to rules governing its  
11 dissemination that are stricter than the provisions of this Protective Order for the  
12 handling of CONFIDENTIAL INFORMATION, that source code shall be treated as  
13 follows:

14           41. Any such material shall be produced on password-protected electronic  
15 media (such as CD-ROM, DVD-ROM, or external hard drive) bearing the designation  
16 “HIGHLY CONFIDENTIAL – SOURCE CODE.” The producing party shall mark  
17 the media as “HIGHLY CONFIDENTIAL – SOURCE CODE,” but the producing  
18 party need not mark the individual files contained in the media with that designation.  
19 Access to such material shall be subject to additional protections given the particularly  
20 sensitive nature of the information and shall be limited to outside counsel for the  
21 receiving parties, to James Harraway alone, but only if James Harraway has not retained  
22 counsel in this case, and to experts, consultants, and associated personnel pursuant to  
23 Paragraph 12(c); the Court and associated personnel pursuant to Paragraph 12(d); and  
24 officers and associated personnel pursuant to Paragraph 12(e). Any third party to this  
25 litigation that produces source code will be afforded the same rights as the parties to  
26 oppose disclosure of the third party’s source code. The source code of third parties will  
27 not be shown to any expert, consultant, or associated personnel pursuant to Paragraph  
28 12(c) until the third party is given notice (including the information required by

1 Paragraph 18(a)) and a reasonable opportunity to object.

2 42. The copying of media bearing the designation “HIGHLY  
3 CONFIDENTIAL – SOURCE CODE” shall be strictly limited. The produced  
4 electronic media shall be copied only to non-networked, stand-alone laptops or desktop  
5 computers. Plaintiff Harraway and FMCNA will each be limited to a total of three such  
6 non-networked, stand-alone laptops or desktop computers (for a total of six stand-alone  
7 computers). This total includes any standalone computers accessible to experts or  
8 consultants disclosed pursuant to Paragraph 12(c). Access to the stand- alone computers  
9 shall be restricted by password protection to avoid access by unauthorized individuals.  
10 The password shall be disclosed only to those individuals authorized to have access to  
11 “HIGHLY CONFIDENTIAL – SOURCE CODE.” The stand-alone computers shall  
12 be kept in a secure location that remains locked when not in regular use. The source  
13 code shall not be copied or transmitted to any computer other than the stand-alone  
14 computers. Each consultant, expert, or attorney will record on a log every page of  
15 source code that has been printed (“printed logs”), and identify the purpose of printing  
16 the pages. Furthermore, the amount of source code printed will be limited only to what  
17 is necessary for the identified purpose and what is required by the rules of evidence  
18 relating to completeness. Source code will only be printed for use in depositions, filings  
19 with the Court, and expert reports. Printed pages of source code cannot be photocopied  
20 except as copies for depositions, filings with the Court, and expert reports. All printed  
21 pages shall bear the “HIGHLY CONFIDENTIAL – SOURCE CODE” designation.

22 43. The password-protected stand-alone computers shall be maintained by  
23 recipients Fish & Richardson P.C. at its offices, at the offices of a third party escrow  
24 company (to be identified later) experienced in the hosting of confidential electronic  
25 information and under the conditions set forth above at a location within 35 miles of  
26 Plaintiff Harraway, or at the offices of experts or consultants disclosed pursuant to  
27 Paragraph 12(c). The stand-alone computers and any printed code sections  
28 (appropriately entered in the printed logs) may be transported to the site of any

1 deposition where testimony relating to the source code is to be solicited, to the Court, or  
2 between offices of the recipients listed above. Transportation to intermediate locations  
3 reasonably necessary to bringing the computer and/or the printed code sections to the  
4 deposition site, Court, or recipient office (e.g., a hotel prior to deposition) shall be  
5 permitted.

6 44. Access to documents or notes pertaining to source code created by  
7 individuals authorized to view “HIGHLY CONFIDENTIAL – SOURCE CODE”  
8 information shall be limited to persons entitled access to “HIGHLY CONFIDENTIAL  
9 – SOURCE CODE” material. Any such documents or notes may reasonably discuss,  
10 refer to, and/or reproduce minor portions of the source code but shall not substantially  
11 or unreasonably copy or reproduce the source code either in whole or in part.

12 45. No source code or documents describing the source code shall be lodged  
13 or filed with the Court except under seal and referencing this Protective Order. If  
14 required in connection with any motion or other proceedings, additional stand-alone  
15 computers containing the source code may be used in a courtroom or in chambers.

16 46. At the end of the case, any entity receiving source code will certify that: (a)  
17 all external media, print-outs, notes regarding any source code, and copies containing  
18 source code have been destroyed, with the exception of exhibits that were attached to  
19 filed (sealed) pleadings or admitted into evidence; (b) the hard drives of the stand-alone  
20 computers have been reformatted; and (c) the print logs have been archived along with  
21 counsel’s other records from this litigation. Other than set forth in this paragraph,  
22 counsel may not maintain a file copy of source code material.

23 47. Nothing in this Order shall obligate the parties to produce any particular  
24 portion of source code and this Order is not an admission that any particular portion of  
25 source code is discoverable, relevant, or admissible.

26 **XII. LIMITATIONS ON EXPERT DISCOVERY**

27 48. The parties agree that discovery of expert materials be limited to final  
28 expert reports and materials relied upon in connection with those reports, and that

1 communications with counsel and draft reports not be discoverable.

2 **IT IS SO ORDERED.**

3 DATED: December 18, 2015

4 

5 \_\_\_\_\_  
6 Honorable Jean P. Rosenbluth  
7 United States Magistrate Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

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

JAMES HARRAWAY

Plaintiff,

v.

FRESENIUS MEDICAL CARE  
HOLDINGS, INC. dba FRESENIUS  
MEDICAL CARE NORTH AMERICA, a  
New York corporation,

Defendant.

Case No. 2:14-cv-09469-BRO-JPR

**AGREEMENT TO BE BOUND  
BY PROTECTIVE ORDER**

AND RELATED COUNTERCLAIMS

I, \_\_\_\_\_, declare and say that:

1. I am employed as \_\_\_\_\_

by \_\_\_\_\_.

2. I have read the Protective Order entered in *Harraway v. Fresenius Medical Care Holding, Inc. dba Fresenius Medical Care North America*, Case No. 2:14-cv-09469-BRO, and have received a copy of the Protective Order.

3. I promise that I will use any and all information designated "CONFIDENTIAL INFORMATION," as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss information designated "CONFIDENTIAL INFORMATION" with anyone other than the persons authorized under Paragraph 12 of the Protective Order.

1           5.     I acknowledge that, by signing this agreement, I am subjecting myself to  
2 the jurisdiction of the United States District Court for the Central District of California  
3 with respect to enforcement of the Protective Order.

4           6.     I understand that any disclosure or use of information designated  
5 “CONFIDENTIAL INFORMATION” in any manner contrary to the provisions of the  
6 Protective Order may subject me to sanctions for contempt of court.

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

8 DATED:     \_\_\_\_\_

9  
10 \_\_\_\_\_

28