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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IV SOLUTIONS, INC.,
Plaintiff,

v.

CIGNA HEALTHCARE OF
CALIFORNIA, INC.,
CONNECTICUT GENERAL LIFE
INSURANCE COMPANY, and DOES
1 through 25, inclusive,
Defendants.

Case No. 2:15-cv-05730-SVW(FFMx)

PROTECTIVE ORDER

Pursuant to the stipulation of the parties, and good cause appearing therefore, the Court enters the following protective order (“Order”) to govern discovery in this action:

1. STATEMENT OF GOOD CAUSE: This action involves claims related to payments for medical products and services provided to a non-party. As such, the Parties expressly understand and agree that certain documents and information relevant to the claims and defenses in this action may contain information that is subject to the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”); California

PROTECTIVE ORDER
2:15-CV-05730-SVW (FFMx)

1 Code of Civil Procedure §§ 56 *et seq.*; or other similar statutory or regulatory
2 privacy protections. The Parties agree that, once adopted, this Order will constitute
3 a Qualified Protective Order under 45 C.F.R. 164.512(e).

4 2. In connection with discovery in this action, the Parties may designate
5 certain documents and testimony, or other information derived therefrom, as
6 “Confidential” or “Attorney’s Eyes Only” under the terms of this Order.

7 3.

8 (a) “Confidential” information is information that is subject to the
9 HIPAA’s Standards or Privacy of Individually Identifiable Health Information;
10 California Code of Civil Procedure §§ 56 *et seq.*; or other similar statutory or
11 regulatory privacy protections, or information which has not been made public and
12 which concerns or relates to the Parties’ business practices and falls within Federal
13 Rule of Civil Procedure 26(c)(1)(G), including within the following categories:
14 material protected under the Uniform Trade Secrets Act, California Civil Code
15 section 3426, *et seq.*, in that such information derives independent economic value,
16 actual or potential, from not being generally known to, and not being readily
17 ascertainable by proper means, by other persons, who can obtain economic value
18 from its disclosures or use; information that is the subject of efforts that are
19 reasonable under the circumstances to maintain its secrecy; material that is regarded
20 by a Party as being confidential, private, or proprietary in nature, customer lists,
21 confidential financial information of the Parties (including but not limited to profit
22 margins, sales data, profits, and retail sales information); vendor lists; order
23 summaries; confidential contracts; proprietary specifications; documents describing
24 concepts, ideas, proposals, designs, inventions, devices, methods of manufacturing,
25 techniques, development processes, marketing programs, and trade secrets; and
26 customer-confidential information, agreements or relationships with non-parties
27 designated as confidential between the parties to such agreements.

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1 (b) "Attorney's Eyes Only" means any Confidential information that any
2 Party determines in good faith is particularly sensitive, confidential, personal,
3 and/or private, and/or the disclosure of which to persons other than those set forth
4 in Section 7(ii) below is reasonably likely to cause serious competitive harm or
5 other harm.

6 4. A party receiving ("Receiving Party") material protected under this
7 agreement ("Protected Material") may use Protected Material disclosed or produced
8 by another Party or by a non-party in connection with this case only for
9 prosecuting, defending, or attempting to settle this litigation.

10 5. By designating a document, testimony or other information derived
11 therefrom as Protected Material labeled "Confidential" or "Attorney's Eyes Only"
12 under the terms of this Order, the Parties are certifying that there is a good faith
13 basis both in law and in fact for the designation. Such "Confidential" or
14 "Attorney's Eyes Only" materials shall be used solely in connection with this
15 lawsuit, and not for any business, competitive, or governmental purpose or
16 function, and such information shall not be disclosed to anyone except as provided
17 herein.

18 6. Except as otherwise provided in this Order, or as otherwise stipulated
19 or ordered, material that qualifies for protection under this Order should be clearly
20 so designated before the material is disclosed or produced. Designation in
21 conformity with this Order requires:

22 (a) for information in documentary form (apart from transcripts of
23 depositions or other pretrial or trial proceedings), that the party producing Protected
24 Material ("Producing Party") affix the legend "Confidential" or "Attorney's Eyes
25 Only" on each page that contains protected material, or prominently on each
26 electronic media that contains protected material.

27 (b) for testimony given in deposition, the testimony may be designated as
28 "Confidential" or "Attorney's Eyes Only" by making a statement to that effect on

1 the record at the deposition. Following the deposition, the party wishing to
2 designate certain testimony as Protected Material (“Designating Party”) shall have
3 30 days, after the transcript becomes available, to identify the specific portions of
4 the testimony as to which protection is sought. Only those portions of the
5 testimony that are appropriately designated for protection within the 30 days shall
6 be covered by the provisions of this Order.

7 (c) for information produced in any other form, including any tangible
8 items, that the Producing Party affix in a prominent place on the exterior of the
9 container or containers in which the information or item is stored the legend
10 “Confidential” or “Attorney’s Eyes Only.” If only portions of the information or
11 item warrant protection, the Producing Party, to the extent practicable, shall identify
12 the protected portions.

13 7.

14 (i) Information or material produced which is designated as
15 “Confidential” may be disclosed or made available only to the Court, to counsel for
16 a party (including the paralegal, clerical, and secretarial staff employed by such
17 counsel), and to the “qualified persons” designated below:

18 a. in-house counsel of a party, or an officer, director, or employee of a
19 party deemed necessary by counsel to aid in the prosecution, defense, or settlement
20 of this action;

21 b. experts or consultants (together with their clerical staff) retained to
22 assist in the prosecution, defense, or settlement of this action who sign an
23 undertaking, in the form of Exhibit A hereto, confirming that they have reviewed
24 and agree to be bound by the terms of this Order;

25 c. court reporter(s) employed in this action;

26 d. a witness at any proceeding in this action; and,

27 e. any other person as to whom the Disclosing Party agrees in writing.

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1 (ii) Information or material produced which is designated as “Attorneys’
2 Eyes Only” may be disclosed or made available to all of the foregoing persons in
3 Section 7(i) except those set forth in subsections (a) and (d) thereof.

4 8. Nothing herein shall impose any restrictions on the use or disclosure
5 by a party of material obtained by such party independent of discovery in this
6 action, whether or not such material is also obtained through discovery in this
7 action, or from disclosing its own Protected Material as it deems appropriate.

8 9. In the event that any Protected Material is used in any proceeding in
9 this action, the party using such shall take all reasonable steps to maintain its
10 confidentiality or attorney’s eyes only status during such use; however, this
11 Paragraph does not apply where the Protected Material appears in the public record.

12 10. Without written permission from the Designating Party or a court
13 order secured after appropriate notice to all interested persons, a Party may not file
14 in the public record in this action any Protected Material. If any Protected Material
15 are to be filed with the Court, such papers shall be accompanied by an application
16 to file the papers, or the confidential or attorney’s eyes only portions thereof, under
17 seal. The application must show good cause for the under seal filing. The
18 application shall be directed to the appropriate judicial officer. Pending the ruling
19 on the application, the papers or portions thereof subject to the sealing application
20 shall be lodged under seal. A Party that seeks to file under seal any Protected
21 Material must comply with Local Rule 79-5 and this Court’s published procedures
22 requiring an application to the Court for an order to seal documents.

23 11. This Stipulation is entered solely for the purpose of facilitating the
24 exchange of documents and information between the Parties to this action without
25 involving the Court unnecessarily in the process. Nothing in this Stipulation nor
26 the production of any information or document under the terms of this Stipulation
27 nor any proceedings pursuant to this Stipulation shall be deemed to have the effect
28 of an admission or waiver by any party or of altering the confidentiality or non-

1 confidentiality, or attorney's eyes only or non-attorney's eyes only, of any such
2 document or information or altering any existing obligation of any party or the
3 absence thereof. Neither the stipulation nor its contents, nor designation of a
4 document as "Confidential" or "Attorney's Eyes Only", nor any party's objection
5 or failure to object to such a designation is admissible as evidence for the purpose
6 of proving or disproving any matter at issue in the litigation. Further, the Parties
7 agree that the "Confidential" or "Attorney's Eyes Only" designations provided on
8 documents for purposes of production under this Order shall have no evidentiary
9 value.

10 12. Inadvertent production of privileged material, or the inadvertent failure
11 to designation material as "Confidential" or "Attorney's Eyes Only", does not
12 waive the privileged, confidential, or attorney's eyes status of the document or
13 information.

14 13. If timely corrected, an inadvertent failure to designate qualified
15 information or items as "Confidential" or "Attorney's Eyes Only" does not,
16 standing alone, waive the Designating Party's right to secure protection under this
17 Order for such material. If material is appropriately designated as "Confidential" or
18 "Attorney's Eyes Only" after the material was initially produced, the Receiving
19 Party, on timely notification of the designation, must make reasonable efforts to
20 assure that the material is treated in accordance with the provisions of this Order,
21 and must immediately (a) notify in writing the Designating Party of any disclosures
22 of such Protected Material, (b) use its best efforts to retrieve all copies of the
23 Protected Material, and (c) inform the person or persons to whom disclosures were
24 made of all the terms of this Order. If the undesignated documents have already
25 been filed with the Court without the confidential or attorney's eyes designation,
26 the Designating Party may move the court for filing of the document under seal.

27 14. Any party may challenge the confidentiality or attorney's eyes only
28 designation of the other party, but shall be required to maintain the confidentiality

1 or attorney's eyes only status of the information unless and until a ruling issues
2 designating that the information ought not be deemed "Confidential" or "Attorney's
3 Eyes Only", or the Designating Party fails to seek a ruling on the confidentiality or
4 attorney's eyes only status of the designated material.

5 15. A party that elects to initiate a challenge to a Designating Party's
6 confidentiality or attorney's eyes only designation must begin the process by
7 conferring directly with counsel for the Designating Party, pursuant to the Local
8 Rules. In conferring, the challenging Party must explain the basis for its belief that
9 the confidentiality or attorney's eyes only designation was not proper and must give
10 the Designating Party an opportunity to review the designated material, to
11 reconsider the circumstances, and, if no change in designation is offered, to explain
12 the basis for the chosen designation.

13 16. If the parties are unable to resolve their dispute regarding the
14 confidentiality of the designated material following the meet and confer process set
15 forth herein, the Designating Party must, pursuant to Federal Rule of Civil
16 Procedure 26, and the rules of this Court, file and serve a motion for a protective
17 order that identifies the material designated as confidential or attorney's eyes only
18 and affirms that the movant has complied with the meet and confer requirements
19 imposed in the preceding paragraph. The Designating Party bears the burden of
20 persuading the Court that the information is Confidential or "Attorney's Eyes
21 Only" within the definitions of those terms set forth above. In the event a motion
22 for protective order is filed, the Parties will comply with the requirements and
23 procedures set forth in Local Rule 37 and will file the motion in the form of a Joint
24 Stipulation. If the Parties wish, or a Party wishes, to file the Joint Stipulation under
25 seal, the Parties may file a stipulation to that effect, or the moving party may file an
26 ex parte application making the appropriate request. The Parties must set forth
27 good cause in the stipulation or ex parte application as to why the Joint Stipulation
28 or portions thereof should be filed under seal.

1 17. In the case of a dispute, the material designated as confidential or
2 attorney's eyes only will be deemed confidential or attorney's eyes only until thirty
3 (30) days following the start of the meet and confer process set forth herein. If the
4 Designating Party files a motion for a protective order, the designated material
5 maintains its confidentiality or attorney's eyes only designation until the court
6 orders otherwise. If the Designating Party fails to file a motion for a protective
7 order following the meet and confer process, after thirty days from the start of the
8 meet and confer process, the material is no longer considered confidential or
9 attorney's eyes only, as the case may be.

10 18. If a Receiving Party is served with a subpoena or a court order issued
11 in other litigation that compels disclosure of any Protected Material that Party must:

12 a. promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

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

18 c. cooperate with respect to all reasonable procedures sought to be
19 pursued by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served with
21 the subpoena or court order shall not produce any information designated in this
22 action as "Confidential" or "Attorney's Eyes Only" before a determination by the
23 court from which the subpoena or order issued, unless the Party has obtained the
24 Designating Party's permission. The Designating Party shall bear the burden and
25 expense of seeking protection in that court of its Confidential Material and nothing
26 in these provisions should be construed as authorizing or encouraging a Receiving
27 Party in this Action to disobey a lawful directive from another court.

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1 19. Upon written request, at the conclusion of this matter, the Parties
2 hereby agree to promptly return all copies of all Protected Material received; or, in
3 the alternative, such parties may shred all copies of all such Protected Material and
4 promptly send written confirmation from the other Party that it has complied with
5 the terms of this Stipulation. Notwithstanding, Counsel shall be able to retain a
6 copy of confidential or attorney’s eyes only information that has been submitted in
7 a pleading or marked as an exhibit in a deposition.

8 20. In the event this action proceeds to trial, if a Party wishes to maintain
9 the confidential or attorney’s eyes only nature of any Protected Material, that Party
10 must apply to the district judge in advance of the trial to seal any exhibits or
11 testimony of a confidential or attorney’s eyes only nature, or any other Protected
12 Material. If this litigation is terminated prior to the commencement of trial, the
13 confidentiality obligations imposed by this Order shall remain in effect until a
14 Designating Party agrees otherwise in writing or a court order otherwise directs,
15 and this Court will retain and shall have jurisdiction over the Parties, their attorneys
16 and all recipients of material designated “Confidential” or “Attorney’s Eyes Only”
17 for the enforcement of the provisions of this Order following termination of this
18 case prior to trial, and/or to terminate all or some of the provisions of this Order on
19 application by any party.

20 21. This Order shall not preclude a party from exercising any rights or
21 raising any objections otherwise available to them under the rules of discovery and
22 evidence.

23 22. This Order shall be binding upon the Parties to this action, the
24 attorneys for each party and upon any recipient of discovery designated as
25 “Confidential” or “Attorney’s Eyes Only” and upon any successor, executor,
26 personal representative, administrator, heir, legal representative, assignee,
27 subsidiaries, division, employee, agent, independent contractor, or other person or

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1 legal entity over which any party or attorney or recipient of documents covered by
2 this Order may have control.

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4 Dated: May 27, 2016

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/s/ Frederick F. Mumm

FREDERICK F. MUMM
United States Magistrate Judge

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1 **EXHIBIT A**

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3 **AGREEMENT CONCERNING MATERIAL COVERED BY ORDER**
4 **GOVERNING THE TREATMENT OF CONFIDENTIAL INFORMATION**
5 **ENTERED IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

7 The undersigned hereby acknowledges that he or she has read the attached
8 Protective Order (“Order”) entered in the United States District Court for the
9 Central District of California, in the litigation entitled *IV Solutions, Inc. v. Cigna*
10 *HealthCare of California, Inc., et al.*, Central District Case No. 2:15-cv-05730-
11 SVW (FFMx), and understands the terms thereof and agrees to be bound by such
12 terms. The undersigned further acknowledges and understands that a violation of
13 the Order could be punishable as a contempt of Court.

14
15 Dated: _____
16 [Signature]
17 _____
18 [Print Name]

19
20 Executed in _____,
21 [City] [State]