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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HEALTHCARE ALLY MANAGEMENT
OF CALIFORNIA, LLC,
Plaintiff,
vs.
BLUECROSS BLUE SHIELD OF
MINNESOTA,
Defendant(s)

Case No.: 2:16-cv-07042-DMG (AFM)
STIPULATED PROTECTIVE ORDER¹

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and

¹ This Stipulated Protective Order is based substantially on the model protective order provided under Magistrate Judge Alexander F. MacKinnon’s Procedures.

1 that the protection it affords from public disclosure and use extends only to the limited
2 information or items that are entitled to confidential treatment under the applicable legal
3 principles.

4
5 **B. GOOD CAUSE STATEMENT**

6 **This action pleads claims against Defendant BCBSM, Inc. d/b/a/ Blue Cross**
7 **and Blue Shield of Minnesota for payment for services rendered by third party**
8 **medical providers to its patients for breach of oral contract, promissory estoppel,**
9 **Business & Professions Code § 17200 and quantum meruit. Based on the nature of**
10 **the claims, the parties may be required to exchange and disclose patients' protected**
11 **health information ("PHI") to each other and this Court. In order to comply with**
12 **the terms of Health Insurance Portability and Accountability Act of 1996**
13 **("HIPPA"), a stipulated protective order is required so that such PHI may be used**
14 **for purposes of this litigation.**

15 This action is likely to involve not only PHI requiring protection pursuant to
16 HIPPA, but also trade secrets, customer and pricing lists and other valuable research,
17 development, commercial, financial, technical and/or proprietary information for which
18 special protection from public disclosure and from use for any purpose other than
19 prosecution of this action is warranted. Such confidential and proprietary materials and
20 information consist of, among other things, confidential business or financial
21 information, information regarding confidential business practices, or other confidential
22 research, development, or commercial information (including information implicating
23 privacy rights of third parties), information otherwise generally unavailable to the public,
24 or which may be privileged or otherwise protected from disclosure under state or federal
25 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of
26 information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the parties are entitled to keep
28

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

9
10 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
11 SEAL

12 The parties further acknowledge, as set forth in Section 12.3, below, that this
13 Stipulated Protective Order does not entitle them to file confidential information under
14 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
15 standards that will be applied when a party seeks permission from the court to file
16 material under seal.

17 There is a strong presumption that the public has a right of access to judicial
18 proceedings and records in civil cases. In connection with non-dispositive motions, good
19 cause must be shown to support a filing under seal. See *Kamakana v. City and*
20 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
21 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics,*
22 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
23 good cause showing), and a specific showing of good cause or compelling reasons with
24 proper evidentiary support and legal justification, must be made with respect to Protected
25 Material that a party seeks to file under seal. The parties' mere designation of Disclosure
26 or Discovery Material as CONFIDENTIAL does not— without the submission of
27 competent evidence by declaration, establishing that the material sought to be filed under
28 seal qualifies as confidential, privileged, or otherwise protectable—constitute good cause.

1 Further, if a party requests sealing related to a dispositive motion or trial, then
2 compelling reasons, not only good cause, for the sealing must be shown, and the relief
3 sought shall be narrowly tailored to serve the specific interest to be protected.

4 *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
5 item or type of information, document, or thing sought to be filed or introduced under
6 seal in connection with a dispositive motion or trial, the party seeking protection must
7 articulate compelling reasons, supported by specific facts and legal justification, for the
8 requested sealing order. Again, competent evidence supporting the application to file
9 documents under seal must be provided by declaration.

10 Any document that is not confidential, privileged, or otherwise protectable in its
11 entirety will not be filed under seal if the confidential portions can be redacted.
12 If documents can be redacted, then a redacted version for public viewing, omitting only
13 the confidential, privileged, or otherwise protectable portions of the document, shall be
14 filed. Any application that seeks to file documents under seal in their entirety should
15 include an explanation of why redaction is not feasible.

16 17 2. DEFINITIONS

18 2.1 Action: Healthcare Ally Management of California, LLC. v BlueCross
19 BlueShield of Minnesota, Case No.: 2:16-cv-07042-DMG (AFM).

20 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
21 information or items under this Order.

22 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
23 is generated, stored or maintained) or tangible things that qualify for protection under
24 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
25 Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
27 support staff).

28 2.5 Designating Party: a Party or Non-Party that designates information or items

1 that it produces in disclosures or in responses to discovery as
2 “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless of the
4 medium or manner in which it is generated, stored, or maintained (including, among
5 other things, testimony, transcripts, and tangible things), that are produced or generated in
6 disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
9 expert witness or as a consultant in this Action.

10 2.8 House Counsel: attorneys who are employees of a party to this Action.
11 House Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association or other
13 legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
15 this Action but are retained to represent or advise a party to this Action and have
16 appeared in this Action on behalf of that party or are affiliated with a law firm that has
17 appeared on behalf of that party, and includes support staff.

18 2.11 Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.13 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
26 their employees and subcontractors.

27 2.14 Protected Material: any Disclosure or Discovery Material that is designated
28 as “CONFIDENTIAL.” Any PHI produced by a Non-Party pursuant to a subpoena even

1 if it is not designated as “Confidential.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
3 a Producing Party.

4
5 3. SCOPE

6 The protections conferred by this Stipulation and Order cover not only
7 Protected Material (as defined above), but also (1) any information copied or extracted
8 from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
9 Material; and (3) any testimony, conversations, or presentations by Parties or their
10 Counsel that might reveal Protected Material.

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

13
14 4. DURATION

15 Once a case proceeds to trial, information that was designated as
16 CONFIDENTIAL or maintained pursuant to this protective order used or introduced as
17 an exhibit at trial becomes public and will be presumptively available to all members of
18 the public, including the press, unless compelling reasons supported by specific factual
19 findings to proceed otherwise are made to the trial judge in advance of the trial. *See*
20 *Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
21 documents produced in discovery from “compelling reasons” standard when merits-
22 related documents are part of court record). Accordingly, the terms of this protective
23 order do not extend beyond the commencement of the trial.

24
25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under
28 this Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. The Designating Party must designate for protection
2 only those parts of material, documents, items or oral or written communications that
3 qualify so that other portions of the material, documents, items or communications for
4 which protection is not warranted are not swept unjustifiably within the ambit of this
5 Order.

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

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

13 *5.2 Manner and Timing of Designations.* Except as otherwise provided in this
14 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
15 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
16 must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
20 that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
21 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
22 portion of the material on a page qualifies for protection, the Producing Party also must
23 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
24 margins).

25 A Party or Non-Party that makes original documents available for inspection need
26 not designate them for protection until after the inspecting Party has indicated which
27 documents it would like copied and produced. During the inspection and before the
28 designation, all of the material made available for inspection shall be deemed

1 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
2 copied and produced, the Producing Party must determine which documents, or portions
3 thereof, qualify for protection under this Order. Then, before producing the specified
4 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
5 that contains Protected Material. If only a portion of the material on a page qualifies for
6 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
7 by making appropriate markings in the margins).

8 (b) for testimony given in depositions that the Designating Party
9 identifies the Disclosure or Discovery Material on the record, before the close of the
10 deposition all protected testimony.

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

16 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
17 to designate qualified information or items does not, standing alone, waive the
18 Designating Party’s right to secure protection under this Order for such material.
19 Upon timely correction of a designation, the Receiving Party must make reasonable
20 efforts to assure that the material is treated in accordance with the provisions of this
21 Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
24 of confidentiality at any time that is consistent with the Court’s
25 Scheduling Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
27 process under Local Rule 37-1 et seq.
28

1 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint
2 stipulation pursuant to Local Rule 37-2.

3 6.4 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
5 harass or impose unnecessary expenses and burdens on other parties) may expose the
6 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
7 the confidentiality designation, all parties shall continue to afford the material in question
8 the level of protection to which it is entitled under the Producing Party’s designation until
9 the Court rules on the challenge.

10
11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this Action
14 only for prosecuting, defending or attempting to settle this Action. Such Protected
15 Material may be disclosed only to the categories of persons and under the conditions
16 described in this Order. When the Action has been terminated, a
17 Receiving Party must comply with the provisions of section 13 below (FINAL
18 DISPOSITION).

19 Protected Material must be stored and maintained by a Receiving Party at a
20 location and in a secure manner that ensures that access is limited to the persons
21 authorized under this Order.

22 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
23 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
24 may disclose any information or item designated “CONFIDENTIAL” only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
26 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
27 to disclose the information for this Action;

28 (b) the officers, directors, and employees (including House Counsel) of

1 the Receiving Party to whom disclosure is reasonably necessary for this Action;

2 (c) Experts (as defined in this Order) of the Receiving Party to whom
3 disclosure is reasonably necessary for this Action and who have signed the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff;

7 (f) professional jury or trial consultants, mock jurors, and Professional
8 Vendors to whom disclosure is reasonably necessary for this Action and who have signed
9 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information;

12 (h) during their depositions, witnesses, and attorneys for witnesses, in the
13 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
14 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
15 be permitted to keep any confidential information unless they sign the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by
17 the Designating Party or ordered by the court. Pages of transcribed deposition testimony
18 or exhibits to depositions that reveal Protected Material may be separately bound by the
19 court reporter and may not be disclosed to anyone except as permitted under this
20 Stipulated Protective Order; and

21 (i) any mediator or settlement officer, and their supporting personnel,
22 mutually agreed upon by any of the parties engaged in settlement discussions. 8.

23 PROTECTED MATERIAL SUBPOENAED OR ORDERED

24 PRODUCED IN OTHER LITIGATION

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

28 (a) promptly notify in writing the Designating Party. Such notification

1 shall include a copy of the subpoena or court order;

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

6 (c) cooperate with respect to all reasonable procedures sought to be
7 pursued by the Designating Party whose Protected Material may be affected. If the
8 Designating Party timely seeks a protective order, the Party served with the subpoena or
9 court order shall not produce any information designated in this action as
10 “CONFIDENTIAL” before a determination by the court from which the subpoena or
11 order issued, unless the Party has obtained the Designating Party’s permission. The
12 Designating Party shall bear the burden and expense of seeking protection in that court of
13 its confidential material and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
15 from another court.

16
17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a
20 Non-Party in this Action. Information other than PHI produced pursuant to a subpoena
21 shall be subject to the terms of this Order if it is designated as “CONFIDENTIAL.” PHI
22 produced pursuant to a subpoena shall be treated as Confidential even in the absence of
23 being designated as “Confidential.” Such information produced by Non-Parties in
24 connection with this litigation is protected by the remedies and relief provided by this
25 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from
26 seeking additional protections.

27 (b) In the event that a Party is required, by a valid discovery request, to
28 produce a Non-Party’s confidential information in its possession, and the Party is subject

1 to an agreement with the Non-Party not to produce the Non-Party's confidential
2 information, then the Party shall:

3 (1) promptly notify in writing the Requesting Party and the Non-
4 Party that some or all of the information requested is subject to a confidentiality
5 agreement with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this Action, the relevant discovery request(s), and a reasonably
8 specific description of the information requested; and

9 (3) make the information requested available for inspection by the
10 Non-Party, if requested.

11 (c) If the Non-Party fails to seek a protective order from this court within
12 14 days of receiving the notice and accompanying information, the Receiving Party may
13 produce the Non-Party's confidential information responsive to the discovery request. If
14 the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
15 information in its possession or control that is subject to the confidentiality agreement
16 with the Non-Party before a determination by the court. Absent a court order to the
17 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
18 court of its Protected Material.

19
20 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
22 Protected Material to any person or in any circumstance not authorized under this
23 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
24 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
25 all unauthorized copies of the Protected Material, (c) inform the person or persons to
26 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
27 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
28 that is attached hereto as Exhibit A.

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2 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
3 PROTECTED MATERIAL

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

13
14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
18 Protective Order, no Party waives any right it otherwise would have to object to
19 disclosing or producing any information or item on any ground not addressed in this
20 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
21 to use in evidence of any of the material covered by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Local Civil Rule 79-5. Protected Material may only
24 be filed under seal pursuant to a court order authorizing the sealing of the specific
25 Protected Material at issue. If a Party's request to file Protected Material under seal is
26 denied by the court, then the Receiving Party may file the information in the public
27 record unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within 30days,
3 each Receiving Party must (a) return to counsel for each party all Protected Material,
4 which by definition includes all materials containing PHI (see ¶ 2.14 above), to the
5 Producing Party or (b) agree with counsel for the Designating Party upon appropriate
6 methods and certification of destruction or other disposition of such Confidential
7 Materials and materials containing personal health information, or (c) as to any
8 Documents, Testimony or other Information not addressed by sub-paragraphs (a) and (b),
9 file a motion seeking a Court order regarding proper preservation of such Materials. To
10 the extent permitted by law the Court shall retain continuing jurisdiction to review and
11 rule upon the motion referred to in sub-paragraph (c) herein.

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2 EXHIBIT A
3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
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5 I, _____ [print or type full name], of
6 _____ [print or type full address], declare under penalty of perjury that I
7 have read in its entirety and understand the Stipulated Protective Order that was issued by
8 the United States District Court for the Central District of California on [date] in the case
9 of Healthcare Ally Management of California, LLC v. BlueCross Blue Shield of
10 Minnesota, Case No. 2:16-cv-07042-DMG (AFM), venued in the United States District
11 Court, Central District of California.. I agree to comply with and to be bound by all the
12 terms of this Stipulated Protective Order and I understand and acknowledge that failure to
13 so comply could expose me to sanctions and punishment in the nature of contempt. I
14 solemnly promise that I will not disclose in any manner any information or item that is
15 subject to this Stipulated Protective Order to any person or entity except in strict
16 compliance with the provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District Court for
18 the Central District of California for enforcing the terms of this Stipulated Protective
19 Order, even if such enforcement proceedings occur after termination of this action.

20 I hereby appoint _____ [print or type full name] of
21 _____ [print or type full address and
22 telephone number] as my California agent for service of process in connection with
23 this action or any proceedings related to enforcement of this Stipulated Protective
24 Order.

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____