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22 UNITED STATES DISTRICT COURT  
 23 CENTRAL DISTRICT OF CALIFORNIA

24 LINDSAY ROGERS,  
 25 Plaintiff,  
 26 v.  
 27 WESTERN UNIVERSITY OF HEALTH  
 28 SCIENCES, and DOES 1-10, inclusive,  
 Defendants.

Case No.: **2:16-cv-07681-MWF-AGR**

**ORDER RE STIPULATION RE  
 PROTECTIVE ORDER**

Judge: Michael W. Fitzgerald  
 Room: 5A

1 **ORDER**

2

3 **GOOD CAUSE APPEARING**, and based on the joint stipulation of the

4 parties, and having found good cause therefore, the Stipulated Protective Order

5 reached by the parties to facilitate the exchange of information and documents that

6 maybe subject to confidentiality limitations on disclosure due to federal laws, state

7 laws, and privacy rights, be entered.

8 **IT IS SO ORDERED.**

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11 Dated: April 7, 2017



12 \_\_\_\_\_

13 HON. ALICIA G. ROSENBERG

14 UNITED STATES MAGISTRATE JUDGE

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**STIPULATION RE PROTECTIVE  
ORDER**

Judge: Michael W. Fitzgerald  
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STIPULATION RE PROTECTIVE ORDER

1 Plaintiff Lindsay Rogers and Defendant Western University of Health  
2 Sciences, by and through their respective counsel of record, in order to facilitate  
3 the exchange of information and documents that may be otherwise subject to  
4 confidentiality, due to medical confidentiality limitations, hereby stipulate to and  
5 petition the Court to enter the following Stipulation and Protective Order. The  
6 Parties stipulate as follows:

7 1. In this Stipulation and Protective Order, the words set forth below  
8 have the following meanings:

9 a. "Proceeding" means this proceeding, *Rogers v. Western*  
10 *University of Health Sciences.*, Case No.: 2:16-CV-07681-MWF-AGR.

11 b. "Court" means Judge Michael Fitzgerald or any other judge to  
12 whom this Proceeding may be assigned.

13 c. "Confidential" for purposes of this Stipulation means any  
14 Protected Health Information in the possession of a Designating Party who  
15 believes in good faith that the information is entitled to confidential treatment  
16 under applicable state or federal law.

17 d. "Confidential Materials" means any Documents, Testimony, or  
18 Information as defined below designated as "Confidential" under the provisions of  
19 this Stipulation and Protective Order.

20 e. "Designating Party" means the Party that designates Materials  
21 as "Confidential."

22 f. "Disclose" or "Disclosed" or "Disclosure" means to reveal,  
23 divulge, give, or make available materials, or any part of materials, or any  
24 information contained in materials.

25 g. "Documents" means (i) any "Writing," "Original," and  
26 "Duplicate," as defined in California Evidence Code Sections 250, 255, and 260,  
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1 that have been produced in discovery in this Proceeding by any person, and (ii) any  
2 copies, reproductions, or summaries of all or any part of those items.

3 h. “Information” means the content of Documents or Testimony.

4 i. “Testimony” means all depositions, declarations, or other  
5 testimony taken or used in this Proceeding.

6 2. The Designating Party has the right to designate as “Confidential” any  
7 Documents, Testimony, or Information that the Designating Party in good faith  
8 believes to be Protected Health Information that is entitled to confidential  
9 treatment under applicable state or federal law. The term “Protected Health  
10 Information” is defined as “individually identifiable health information” that has  
11 the same scope and definition as set forth in the Health Insurance Portability and  
12 Accountability Act of 1996 (“HIPAA”), 42 U.S.C. § 1320d, *et seq.*, and the  
13 regulations issued by the United States Department of Health and Human Services  
14 pursuant to HIPPA. “Individually identifiable health information” means any  
15 information that (a) is created or received by a health care provider, health plan,  
16 employer, or health care clearinghouse (a “covered entity”); and (b) relates to the  
17 past, present, or future physical or mental health or condition of an individual, the  
18 provision of health care to an individual, or the past, present or future payment for  
19 the provision of health care to an individual and which (i) identifies the individual  
20 or (ii) with respect to which there is a reasonable basis to believe that the  
21 information can be used to identify the individual. In citing to HIPPA and its  
22 regulations, is not the intent of Defendant Western University of Health Sciences  
23 to itself identify as a covered entity for purposes of this litigation.

24 3. The entry of this Stipulation and Protective Order does not alter,  
25 waive, modify, or abridge any right, privilege, or protection otherwise available to  
26 any Party with respect to the discovery of matters, including but not limited to any  
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1 Party's right to assert the attorney-client privilege, the attorney work product  
2 doctrine, or other privileges, or any Party's right to contest any such assertion.

3 4. Any Documents, Testimony, or Information to be designated as  
4 "Confidential" must be clearly so designated before the Document, Testimony, or  
5 Information is Disclosed or produced. The parties may agree that the case name  
6 and number are to be part of the "Confidential" designation. The "Confidential"  
7 designation should not obscure or interfere with the legibility of the designated  
8 Information.

9 a. For Documents (apart from transcripts of depositions or other  
10 pretrial or trial proceedings), the Designating Party must affix the legend  
11 "Confidential" on each page of any Document containing designated Confidential  
12 Material.

13 b. For Testimony given in depositions the Designating Party may  
14 either:

15 i. identify on the record, before the close of the deposition,  
16 all "Confidential" Testimony, by specifying all portions of the  
17 Testimony that qualify as "Confidential;" or

18 ii. within 30 days following receipt of the deposition  
19 transcript, designate all or portions of the Testimony as containing  
20 Confidential Information by notifying the other party in writing of the  
21 specific pages and lines of the transcript containing Confidential  
22 Information. All depositions, regardless of whether a designation of  
23 confidentiality was made on the record, will be treated as containing  
24 Confidential Information and subject to this Protective Order until  
25 (30) days after a transcript of the deposition is received. In  
26 circumstances where portions of the deposition Testimony are  
27 designated for protection, the transcript pages containing  
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1 “Confidential” Information may be separately bound by the court  
2 reporter, who must affix to the top of each page the legend  
3 “Confidential,” as instructed by the Designating Party.

4 c. For Information produced in some form other than Documents,  
5 and for any other tangible items, including, without limitation, compact discs or  
6 DVDs, the Designating Party must affix in a prominent place on the exterior of the  
7 container or containers in which the Information or item is stored the legend  
8 “Confidential.” If only portions of the Information or item warrant protection, the  
9 Designating Party, to the extent practicable, must identify the “Confidential”  
10 portions.

11 5. The inadvertent production by any party of any Document,  
12 Testimony, or Information during discovery in this Proceeding without a  
13 “Confidential” designation will be without prejudice to any claim that the item is  
14 “Confidential” and the Party will not be held to have waived any rights by the  
15 inadvertent production. In the event that any Document, Testimony, or Information  
16 that is subject to a “Confidential” designation is inadvertently produced without the  
17 designation, the Party that inadvertently produced the document must give written  
18 notice of the inadvertent production within twenty (20) days of discovery of the  
19 inadvertent production, together with a further copy of the subject Document,  
20 Testimony, or Information designated as “Confidential” (the “Inadvertent  
21 Production Notice”). Upon receipt of the Inadvertent Production Notice, the Party  
22 that received the inadvertently produced Document, Testimony, or Information  
23 must promptly destroy the inadvertently produced Document, Testimony, or  
24 Information and all copies of it, or, at the expense of the producing Party, return it  
25 together with all copies of the Document, Testimony, or Information to counsel for  
26 the producing Party and shall retain only the “Confidential” designated Materials.  
27 Should the receiving Party choose to destroy such inadvertently produced  
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1 Document, Testimony, or Information, the receiving Party must notify the  
2 producing Party in writing of the destruction within ten (10) days of receipt of  
3 written notice of the inadvertent production. This provision is not intended to apply  
4 to any inadvertent production of any Information protected by attorney-client or  
5 work product privileges. In the event that this provision conflicts with any  
6 applicable law regarding waiver of confidentiality through the inadvertent  
7 production of Documents, Testimony, or Information, this order will govern.

8         6. In the event that counsel for a Party receiving Documents, Testimony,  
9 or Information in discovery designated as “Confidential” objects to the designation  
10 with respect to any or all of designated items, objecting counsel will advise counsel  
11 for the Designating Party, in writing, of the objections, the specific Documents,  
12 Testimony, or Information to which each objection pertains, and the specific  
13 reasons and support for the objections (the “Designation Objections”). Counsel for  
14 the Designating Party will have thirty (30) days from receipt of the written  
15 Designation Objections to either (a) agree in writing to de-designate the  
16 Documents, Testimony, or Information and/or (b) file a motion with the Court  
17 seeking to uphold any or all designations on Documents, Testimony, or  
18 Information addressed by the Designation Objections (the “Designation Motion”).  
19 Pending a resolution of the Designation Motion by the Court, any and all existing  
20 designations on the Documents, Testimony, or Information at issue in the  
21 Designation Motion will remain in place. The Designating Party has the burden on  
22 any Designation Motion of establishing the applicability of its “Confidential”  
23 designation. In the event that the Designation Objections are neither timely agreed  
24 to nor timely addressed in the Designation Motion, then the Documents,  
25 Testimony, or Information will be de-designated in accordance with the  
26 Designation Objection applicable to the material.



1           7.     Access to and/or Disclosure of Confidential Materials designated as  
2 “Confidential” will be permitted only to the following persons:

3           a.     the Court;

4           b.     Attorneys of record in the Proceedings and their affiliated  
5 attorneys, paralegals, clerical and secretarial staff employed by the attorneys who  
6 are actively involved in the Proceedings and are not employees of any Party, and  
7 any in-house counsel to the undersigned Parties and the paralegal, clerical, and  
8 secretarial staff employed by the counsel. Provided, however, that each non-lawyer  
9 given access to Confidential Materials will be advised that the Materials are being  
10 Disclosed under, and are subject to, the terms of this Stipulation and Protective  
11 Order and that they may not be Disclosed in violation of its terms;

12           c.     those officers, directors, employees, and affiliates, including e-  
13 discovery vendors, of all non-designating Parties that counsel for the Parties deems  
14 necessary to aid counsel in the prosecution and defense of this Proceeding;  
15 provided, however, that before the Disclosure of Confidential Materials to any  
16 officer, director, employee, or affiliate, counsel for the Party making the Disclosure  
17 will deliver a copy of this Stipulation and Protective Order to the person, explain  
18 that such person is bound to follow the terms of the Order, and secure the signature  
19 of the person on a statement in the form attached as Exhibit A;

20           d.     court reporters in this Proceeding (whether at depositions,  
21 hearings, or any other proceeding);

22           e.     any deposition, trial, or hearing witness in the Proceeding who  
23 previously has had access to the Confidential Materials, or who is currently or was  
24 previously an officer, director, partner, member, employee, or agent of an entity  
25 that has had access to the Confidential Materials;

26           f.     outside experts or expert consultants consulted by the  
27 undersigned Parties or their counsel in connection with the Proceeding, whether or  
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1 not retained to testify at any oral hearing; provided, however, that before the  
2 Disclosure of Confidential Materials to any expert or expert consultant, counsel for  
3 the Party making the Disclosure must deliver a copy of this Stipulation and  
4 Protective Order to the person, explain its terms to the person, and secure the  
5 signature of the person on a statement in the form attached as Exhibit A. It will be  
6 the obligation of counsel, upon learning of any breach or threatened breach of this  
7 Stipulation and Protective Order by any expert or expert consultant, to promptly  
8 notify counsel for the Designating Party of the breach or threatened breach; and

9 g. any other person that the Designating Party agrees to in writing.

10 8. Confidential Materials may be used by the persons receiving them  
11 only for the purposes of preparing for, conducting, participating in the conduct of,  
12 and/or prosecuting and/or defending the Proceeding, and not for any business or  
13 other purpose whatsoever.

14 9. Any Party to the Proceeding (or other person subject to the terms of  
15 this Stipulation and Protective Order) may ask the Court, after appropriate notice to  
16 the other Parties to the Proceeding, to modify or grant relief from any provision of  
17 this Stipulation and Protective Order.

18 10. Entering into, agreeing to, and/or complying with the terms of this  
19 Stipulation and Protective Order will not:

20 a. operate as an admission by any person that any particular  
21 Document, Testimony, or Information marked “Confidential” contains or reflects  
22 trade secrets, proprietary, confidential or competitively sensitive business,  
23 commercial, financial, personal or Protected Health information; or

24 b. prejudice in any way the right of any Party (or any other person  
25 subject to the terms of this Stipulation and Protective Order):

26 i. to seek a determination by the Court of whether any  
27 particular Confidential Material should be subject to protection as  
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1 “Confidential” under the terms of this Stipulation and Protective  
2 Order; or

3 ii. to seek relief from the Court on appropriate notice to all  
4 other Parties to the Proceeding from any provision(s) of this  
5 Stipulation and Protective Order, either generally or as to any  
6 particular Document, Material or Information.

7 11. Any Party to the Proceeding who has not executed this Stipulation and  
8 Protective Order as of the time it is presented to the Court for signature may  
9 thereafter become a Party to this Stipulation and Protective Order by its counsel’s  
10 signing and dating a copy and filing it with the Court, and serving copies of the  
11 signed and dated copy upon the other Parties to this Stipulation and Protective  
12 Order.

13 12. Any Information that may be produced by a non-Party witness in  
14 discovery in the Proceeding in response to subpoena or otherwise may be  
15 designated by the non-Party as “Confidential” under the terms of this Stipulation  
16 and Protective Order, and any designation by a non-Party will have the same force  
17 and effect, and create the same duties and obligations, as if made by one of the  
18 undersigned Parties. Any such designation will also function as a consent by the  
19 producing Party to the authority of the Court in the Proceeding to resolve and  
20 conclusively determine any motion or other application made by any person or  
21 Party with respect to the designation, or any other matter otherwise arising under  
22 this Stipulation and Protective Order.

23 13. If any person subject to this Stipulation and Protective Order who has  
24 custody of any Confidential Materials receives a subpoena or other process  
25 (“Subpoena”) from any government or other person or entity demanding  
26 production of Confidential Materials, the recipient of the Subpoena will promptly  
27 (but not later than 5 days before production is required) give notice of the  
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1 Subpoena by electronic mail transmission, followed by either express mail or  
2 overnight delivery, to counsel of record for the Designating Party, and will furnish  
3 counsel with a copy of the Subpoena. Upon receipt of this notice, the Designating  
4 Party may, in its sole discretion and at its own cost, move to quash or limit the  
5 Subpoena, otherwise oppose production of the Confidential Materials, and/or seek  
6 to obtain confidential treatment of the Confidential Materials from the subpoenaing  
7 person or entity to the fullest extent available under law. The recipient of the  
8 Subpoena may not produce any Documents, Testimony, or Information in response  
9 to the Subpoena before the date specified for production on the Subpoena.

10 14. Nothing in this Stipulation and Protective Order may be construed to  
11 preclude either Party from asserting in good faith that certain Confidential  
12 Materials require additional protection. The Parties will meet and confer to agree  
13 upon the terms of any additional protection.

14 15. If, after execution of this Stipulation and Protective Order, any  
15 Confidential Materials submitted by a Designating Party under the terms of this  
16 Stipulation and Protective Order is Disclosed by a non-Designating Party to any  
17 person other than in the manner authorized by this Stipulation and Protective  
18 Order, the non-Designating Party responsible for the Disclosure will bring all  
19 pertinent facts relating to the Disclosure of the Confidential Materials to the  
20 immediate attention of the Designating Party.

21 16. This Stipulation and Protective Order is entered into without prejudice  
22 to the right of any Party to knowingly waive the applicability of this Stipulation  
23 and Protective Order to any Confidential Materials designated by that Party. If the  
24 Designating Party uses Confidential Materials in a non-Confidential manner, then  
25 the Designating Party will advise that the designation no longer applies.  
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1           17. The Parties will meet and confer regarding the procedures for use of  
2 Confidential Materials at trial and will move the Court for entry of an appropriate  
3 order.

4           18. Nothing in this Stipulation and Protective Order affects the  
5 admissibility into evidence of Confidential Materials or abridges the rights of any  
6 person to seek appropriate action with respect to any ruling made by the Court  
7 concerning the issue of the status of Protected Material.

8           19. This Stipulation and Protective Order will continue to be binding after  
9 the conclusion of this Proceeding and all subsequent proceedings arising from this  
10 Proceeding, except that a Party may seek the written permission of the Designating  
11 Party or may move the Court for relief from the provisions of this Stipulation and  
12 Protective Order.

13           20. Upon written request made within thirty (30) days after the conclusion  
14 of the Proceeding, the undersigned Parties will have thirty (30) days to either (a)  
15 promptly return to counsel for each Designating Party all Confidential Materials  
16 and all copies of Confidential Materials (except that counsel for each Party may  
17 maintain in its files, in continuing compliance with the terms of this Stipulation  
18 and Protective Order, all work product, and one copy of each pleading filed with  
19 the Court), (b) agree with counsel for the Designating Party upon appropriate  
20 methods and certification of destruction or other disposition of the Confidential  
21 Materials, or (c) as to any Documents, Testimony, or other Information not  
22 addressed by subparagraphs (a) and (b), file a motion seeking an Court order  
23 regarding proper preservation of the Materials. To the extent permitted by law the  
24 Court will retain continuing jurisdiction to review and rule upon the motion  
25 referred to in subparagraph (c).

26           21. After this Stipulation and Protective Order has been signed by counsel  
27 for all Parties, it will be presented to the Court for entry. Counsel agree to be  
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1 bound by the terms of this Stipulation and Protective Order with regard to any  
2 Confidential Materials that have been or will be produced before the Court signs  
3 this Stipulation and Protective Order.

4 22. The Parties and all signatories to the Stipulation agree to be bound by  
5 this Stipulation and Protective Order pending its approval and entry by the Court.  
6 In the event that the Court modifies this Stipulation and Protective Order, or in the  
7 event that the Court enters a different Protective Order, the Parties agree to be  
8 bound by this Stipulation and Protective Order until the Court enters a different  
9 Order. It is the Parties' intent to be bound by the terms of this Stipulation and  
10 Protective Order pending its entry so as to allow for immediate production of  
11 Confidential Materials under these terms.

12 23. This Stipulation and Protective Order may be executed in  
13 counterparts. Scanned and faxed signatures have the same force and effect as  
14 originals.

15 Respectfully submitted,

16  
17 Dated: March 31, 2017

/s/ Christopher H. Knauf

18 Christopher H. Knauf  
19 Laura N. Diamond  
20 KNAUF ASSOCIATES  
21 Attorneys for Plaintiff

22 Dated: March 31, 2017

/s/ Alysha Stein-Manes

23 Mark H. Meyerhoff  
24 Alysha Stein-Manes  
25 LIEBERT CASSIDY WHITMORE  
26 Attorneys for Defendant  
27  
28