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 6 Epifania Nicolas DDS, Inc.

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 8 UNITES STATED DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

10 ANA ILAGAN, ) Case No.: 2:16-cv-08119-ODW-MRW  
 11 )  
 Plaintiff, ) **STIPULATED PROTECTIVE ORDER**  
 12 )  
 vs. )  
 13 )  
 EPIFANIA NICOLAS, et al., )  
 14 )  
 Respondent. )  
 15 )  
 16 ) (MRW VERSION 2/17)

17 1. INTRODUCTION

18 1.1. PURPOSES AND LIMITATIONS - Discovery in this action is likely to involve  
 19 production of confidential, proprietary, or private information for which special  
 20 protection from public disclosure and from use for any purpose other than prosecuting  
 21 this litigation may be warranted. Accordingly, the parties hereby stipulate to and  
 22 petition the Court to enter the following Stipulated Protective Order. The parties  
 23 acknowledge that this Order does not confer blanket protections on all disclosures or  
 24 responses to discovery and that the protection it affords from public disclosure and use  
 25 extends only to the limited information or items that are entitled to confidential treatment  
 26 under the applicable legal principles. The parties further acknowledge, as set forth in  
 27 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
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1 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that  
2 must be followed and the standards that will be applied when a party seeks permission  
3 from the court to file material under seal.

4 1.2. GOOD CAUSE STATEMENT - Plaintiff was an employee of defendant. Defendant is a  
5 California licensed dentist. Plaintiff has alleged that the defendant was fraudulently  
6 billing medicare for dental procedures during plaintiff's employment. Plaintiff further  
7 alleges that she confronted defendant about the fraudulent billing and that subsequently  
8 plaintiff terminated defendant's employment because defendant complained about the  
9 fraudulent billing. Thus, the individual medical charts and billing records of defendant's  
10 patients are central to this proceeding. As such, the federal privacy requirements of  
11 HIPPA are triggered since these are medical records. As Defendant is a medical  
12 provider she is a covered entity under HIPPA. As provided by HIPPA, in order for these  
13 documents to be provided in Judicial and Administrative Proceedings there must be a  
14 protective order.

15 2. DEFINITIONS

16 2.1. Action: This pending federal lawsuit.

17 2.2. Challenging Party: a Party or Non-Party that challenges the designation of information  
18 or items under this order.

19 2.3. "CONFIDENTIAL" Information or Items: Information (regardless of how it is  
20 generated, stored or maintained) or tangible things that qualify for protection under  
21 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause  
22 Statement.

23 2.4. Counsel: Outside Counsel or Record and House Counsel (as well as their support staff).

24 2.5. Designating Party: A Party or Non-Party that designates information or items that it  
25 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

26 2.6. Disclosure or Discovery Material: all items or information, regardless of the medium or  
27 manner which it is generated, stored, or maintained (including, among other things,  
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testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

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

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

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

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

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

2.12. Production Party: a party or non-party that produces disclosure or discovery material in this action

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

2.14. Protected Material: any disclosure or discovery material that is designated as CONFIDENTIAL.

2.15. Receiving Party: a Party that receives disclosure or discovery material from a producing party.

3. SCOPE – The protections conferred by this stipulation and order cover not only protected material (as defined above), but also (1) any information copied or extracted from protected

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material; (2) all copies, excerpts, summaries, or compilations of protected material; and (3) any testimony, confversations, or presentations by parties or their counsel that might reveal protected material.

3.1.1. Any use of protected material at trial will be governed by the orders of the trial judge. This Order does not govern the use of protected material at trial.

4. DURATION – Even after final disposition of this litigation, the confidentiality obligations imposed by this order will remain in effect until a court order otherwise directs. Final disposition will be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1. Exercise of Restrain and Care in Designating Material for Protection

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

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

1 5.1.3. If it comes to a Designating Party's attention that information or items that it  
2 designated for protection do not qualify for protection, that Designating Party must  
3 promptly notify all other Parties that it is withdrawing the inapplicable designation.

4 5.2. Manner and Timing of Designations: Except as otherwise provided in this Order (see,  
5 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
6 disclosure or discovery material that qualifies for protection under this Order must be  
7 clearly so designated before the material is disclosed or produced.

8 5.2.1. Designation in conformity with this Order requires:

9 5.2.1.1. for information in documentary form(e.g., paper or electronic documents,  
10 but excluding transcripts of depositions or other pretrial or trial proceedings),  
11 that the Producing Party affix at a minimum, the legend "CONFIDENTIAL"  
12 (hereinafter "CONFIDENTIAL legend"), to each page that contains protected  
13 material. If only a portion or portions of the material on a page qualifies for  
14 protection, the Producing Party also must clearly identify the protected  
15 portions(s) (e.g., by making appropriate markings in the margins).

16 5.2.1.2. A Party or Non-Party that makes original documents available for  
17 inspection need not designate them for protection until after the inspecting  
18 Party has indicated which documents it would like copied and produced.  
19 During the inspection and before the designation, all of the material made  
20 available for inspection will be deemed "CONFIDENTIAL." After the  
21 inspecting Party has identified the documents it wants copied and produced,  
22 the Producing Party must determine which documents, or portions thereof,  
23 qualify for protection under this Order. Then, before producing the specified  
24 documents, the Producing Party must affix the "CONFIDENTIAL legend" to  
25 each page that contains Protected Material. If only a portion or portions of the  
26 material on a page qualifies for protection, the Producing Party also must  
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1 clearly identify the protected portion(s) (e.g., by making appropriate markings  
2 in the margins).

3 5.2.1.3. for testimony given in depositions that the Designating Party identify the  
4 Disclosure or Discovery Material on the record, before the close of the  
5 deposition all protected testimony.

6 5.2.1.4. for information produced in some form other than documentary and for  
7 any other tangible items, that the Producing Party affix in a prominent place on  
8 the exterior of the container or containers in which the information is stored  
9 the legend "CONFIDENTIAL." If only a portion or portions of the  
10 information warrants protection, the Producing Party, to the extent practicable,  
11 will identify the protected portion(s).

12 5.3. Inadvertent Failures to Designate: If timely corrected, an inadvertent failure to designate  
13 qualified information or items does not, standing alone, waive the Designating Party's  
14 right to secure protection under this Order for such material. Upon timely correction of  
15 a designation, the Receiving Party must make reasonable efforts to assure that the  
16 material is treated in accordance with the provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1. Timing of challenges: Any Party or Non-Party may challenge a designation of  
19 confidentiality at any time that is consistent with the Court's Scheduling Order.

20 6.2. Meet and Confer: The Challenging Party will initiate the dispute resolution process (and,  
21 if necessary, file a discovery motion) under Local Rule 37.1 et seq.

22 6.3. The burden of persuasion in any such challenge proceeding will be on the Designating  
23 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or  
24 impose unnecessary expenses and burdens on other parties) may expose the Challenging  
25 Party to sanctions. Unless the Designating Party has waived or withdrawn the  
26 confidentiality designation, all parties will continue to afford the material in question the  
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1 level of protection to which it is entitled under the Producing Party’s designation until  
2 the Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1. Basic Principles:

5 7.1.1. A Receiving Party may use Protected Material that is disclosed or produced by  
6 another Party or by a Non-Party in connection with this Action only for prosecuting,  
7 defending, or attempting to settle this Action. Such Protected Material may be  
8 disclosed only to the categories of persons and under the conditions described in this  
9 Order. When the Action has been terminated, a Receiving Party must comply with  
10 the provisions of section 13 below (FINAL DISPOSITION).

11 7.1.2. Protected Material must be stored and maintained by a Receiving Party at a  
12 location and in a secure manner that ensures that access is limited to the persons  
13 authorized under this Order.

14 7.2. Disclosure of "CONFIDENTIAL" Information or Items: Unless otherwise ordered by  
15 the court or permitted in writing by the Designating Party, a Receiving Party may  
16 disclose any information or item designated “CONFIDENTIAL” only to:

17 7.2.1. the Receiving Party’s Outside Counsel of Record in this Action, as well as  
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
19 disclose the information for this Action;

20 7.2.2. the officers, directors, and employees (including House Counsel) of the Receiving  
21 Party to whom disclosure is reasonably necessary for this Action;

22 7.2.3. Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
23 reasonably necessary for this Action and who have signed the “Acknowledgment  
24 and Agreement to Be Bound” (Exhibit A);

25 7.2.4. the Court and its personnel;

26 7.2.5. court reporters and their staff;

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1 7.2.6. professional jury or trial consultants, mock jurors, and Professional Vendors to  
2 whom disclosure is reasonably necessary for this Action and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 7.2.7. the author or recipient of a document containing the information or a custodian or  
5 other person who otherwise possessed or knew the information;

6 7.2.8. during their depositions, witnesses ,and attorneys for witnesses, in the Action to  
7 whom disclosure is reasonably necessary provided: (1) the deposing party requests  
8 that the witness sign the form attached as Exhibit A hereto; and (2) they will not be  
9 permitted to keep any confidential information unless they sign the  
10 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
11 agreed by the Designating Party or ordered by the court. Pages of transcribed  
12 deposition testimony or exhibits to depositions that reveal Protected Material may  
13 be separately bound by the court reporter and may not be disclosed to anyone except  
14 as permitted under this Stipulated Protective Order; and

15 7.2.9. any mediator or settlement officer, and their supporting personnel, mutually  
16 agreed upon by any of the parties engaged in settlement discussions.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
18 **LITIGATIONS:**

19 8.1. If a party is served with a subpoena or a court order issued in other litigation that  
20 compels disclosure of any information or items designated in this Action as  
21 “CONFIDENTIAL,” that Party must:

22 8.1.1. promptly notify in writing the Designating Party. Such notification will include a  
23 copy of the subpoena or court order;

24 8.1.2. promptly notify in writing the party who caused the subpoena or order to issue in  
25 the other litigation that some or all of the material covered by the subpoena or order  
26 is subject to this Protective Order. Such notification will include a copy of this  
27 Stipulated Protective Order; and  
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1 8.1.3. cooperate with respect to all reasonable procedures sought to be pursued by the  
2 Designating Party whose Protected Material may be affected.

3 8.1.3.1. If the Designating Party timely seeks a protective order, the Party served  
4 with the subpoena or court order will not produce any information designated  
5 in this action as “CONFIDENTIAL” before a determination by the court from  
6 which the subpoena or order issued, unless the Party has obtained the  
7 Designating Party’s permission. The Designating Party will bear the burden  
8 and expense of seeking protection in that court of its confidential material and  
9 nothing in these provisions should be construed as authorizing or encouraging  
10 a Receiving Party in this Action to disobey a lawful directive from another  
11 court.

12 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
13 LITIGATION:

14 9.1. The terms of this Order are applicable to information produced by a Non-Party in this  
15 Action and designated as “CONFIDENTIAL.” Such information produced by Non-  
16 Parties in connection with this litigation is protected by the remedies and relief provided  
17 by this Order. Nothing in these provisions should be construed as prohibiting a Non-  
18 Party from seeking additional protections.

19 9.2. In the event that a Party is required, by a valid discovery request, to produce a Non-  
20 Party’s confidential information in its possession, and the Party is subject to an  
21 agreement with the Non-Party not to produce the Non-Party’s confidential information,  
22 then the Party will:

23 9.2.1. promptly notify in writing the Requesting Party and the Non-Party that some or  
24 all of the information requested is subject to a confidentiality agreement with a Non-  
25 Party;  
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1 9.2.2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
2 this Action, the relevant discovery request(s), and a reasonably specific description  
3 of the information requested; and

4 9.2.3. make the information requested available for inspection by the Non-Party, if  
5 requested.

6 9.3. If the Non-Party fails to seek a protective order from this court within 14 days of  
7 receiving the notice and accompanying information, the Receiving Party may produce  
8 the Non-Party's confidential information responsive to the discovery request. If the  
9 Non-Party timely seeks a protective order, the Receiving Party will not produce any  
10 information in its possession or control that is subject to the confidentiality agreement  
11 with the Non-Party before a determination by the court.

12 9.3.1. Absent a court order to the contrary, the Non-Party will bear the burden and  
13 expense of seeking protection in this court of its Protected Material.

14 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL:**

15 10.1. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this  
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
18 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
19 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
20 whom unauthorized disclosures were made of all the terms of this Order, and (d) request  
21 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"  
22 that is attached hereto as Exhibit A.

23 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
24 **MATERIAL**

25 11.1. When a Producing Party gives notice to Receiving Parties that certain  
26 inadvertently produced material is subject to a claim of privilege or other protection, the  
27 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
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1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
2 may be established in an e-discovery order that provides for production without prior  
3 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
4 parties reach an agreement on the effect of disclosure of a communication or information  
5 covered by the attorney-client privilege or work product protection, the parties may  
6 incorporate their agreement in the stipulated protective order submitted to the court.

7 **12. MISCELLANEOUS**

8 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to  
9 seek its modification by the Court in the future.

10 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective  
11 Order no Party waives any right it otherwise would have to object to disclosing or  
12 producing any information or item on any ground not addressed in this Stipulated  
13 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
14 evidence of any of the material covered by this Protective Order.

15 12.3. Filing Protected Material. A Party that seeks to file under seal any Protected  
16 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
17 under seal pursuant to a court order authorizing the sealing of the specific Protected  
18 Material at issue. If a Party's request to file Protected Material under seal is denied by  
19 the court, then the Receiving Party may file the information in the public record unless  
20 otherwise instructed by the court.

21 12.4. FINAL DISPOSITION

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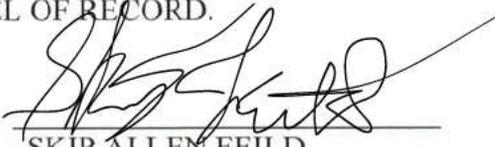
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the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving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

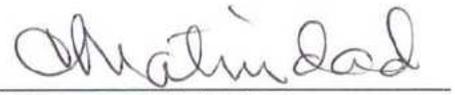
14. Any willful violation of this Order may be punished by civil or criminal contempt proceedings, financial or evidentiary sanctions, reference to disciplinary authorities, or other appropriate action at the discretion of the Court.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: 7-9-17

  
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SKIP ALLEN FEILD  
Attorney for Defendants,  
Epifania Nicolas, and  
Epifania Nicolas DDS, Inc.

Dated: July 9, 2017

  
\_\_\_\_\_  
Cesar S. Natividad, Esq.  
THE NATIVIDAD LAW FIRM  
Attorney for Plaintiff,  
Ana Ilagan

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: August 11, 2017

  
\_\_\_\_\_  
HON. MICHAEL R. WILNER  
United States Magistrate Judge

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

3 I am a resident of the aforesaid county and am over the age of eighteen years. I am not a  
4 party to this action. My business address is 6809 Indiana Ave., #154, Riverside CA 92506.

5 On the date set forth below, I served the foregoing document described as: **STIPULATED**  
6 **PROTECTIVE ORDER**  
7 on the interested parties to this action in the manner described below and as addressed as follows:

8 Cesar S. Natividad, Esq.  
9 VIA EMAIL csnlaw@yahoo.com  
10 THE NATIVIDAD LAW FIRM  
11 3550 Wilshire Blvd, Suite 655  
12 Los Angeles CA 90010

13  **BY U.S. MAIL:** I enclosed the document(s) listed above in a sealed envelope or  
14 package, addressed to the person(s) at the address(es) set forth above and placed the envelope or  
15 package for collection and mailing, following this firm's ordinary business practices. I am  
16 readily familiar with this firm's practice for collecting and processing of documents for mailing.  
17 Under that practice, on the same day that document(s) is/are placed for collection and mailing,  
18 it/they is/are deposited in the ordinary course of business with the U.S. Postal Service, in a sealed  
19 envelope or package with postage fully prepaid.

20  **BY FAX TRANSMISSION:** I faxed the document(s) to the persons at the fax  
21 numbers listed above. No error was reported by the fax machine that I used. A copy of the  
22 record of the fax transmission containing the time, date, and sending fax machine telephone  
23 number, which I printed out, is available upon request.

24  **BY HAND-DELIVERY:** I served the document(s) by placing it/them in an  
25 envelope or package addressed to the persons at the addresses listed above and providing them to  
26 a professional messenger service for service. A copy of the professional messenger's proof of  
27 delivery is available upon request.

28  **BY E-MAIL:** I caused the document(s) to be served electronically on the  
persons at the electronic notification addresses listed below.

**BY OVERNIGHT DELIVERY:** I enclosed the documents in an envelope or  
package provided by an overnight delivery carrier and addressed to the person(s) at the  
address(es) listed above. I placed the envelope or package for collection and overnight delivery  
at an office or a regularly utilized drop box of the overnight delivery carrier.

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

Executed on August 9, 2017, at Riverside, California.

  
Skip Allen Feild