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

CREATIVE CARE, INC.,  
Plaintiff,  
v.  
CONNECTICUT GENERAL LIFE  
INSURANCE COMPANY, CIGNA  
HEALTH CORPORATION, and DOES 1  
through 20, Inclusive,  
Defendants.

Case No. 2:16-cv-09056-DMG-AGR  
Assigned to: Hon. Dolly M. Gee  
Magistrate: Hon. Alicia G. Rosenberg

**DISCOVERY MATTER  
STIPULATED PROTECTIVE  
ORDER**

1 1. BACKGROUND

2 A. PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential  
4 commercial, proprietary, or other sensitive, private information, including protected  
5 health information,<sup>1</sup> for which special protection from public disclosure and from use  
6 for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
7 the parties hereby stipulate to and petition the Court to enter the following Stipulated  
8 Protective Order. The parties acknowledge that this Order does not confer blanket  
9 protections on all disclosures or responses to discovery and that the protection it  
10 affords from public disclosure and use extends only to the limited information or  
11 items that are entitled to confidential treatment under the applicable legal principles.  
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; Civil Local 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 B. GOOD CAUSE STATEMENT

18 This action is likely to involve protected patient information and sensitive,  
19 proprietary business information and trade secrets for which special protection from  
20 public disclosure and from use for any purpose other than prosecution of this action is  
21 warranted. Such confidential and proprietary materials and information consist of,  
22 among other things, patient medical information protected under HIPAA, confidential  
23 business or financial information, information regarding confidential business  
24 practices, or other confidential commercial information (including information  
25 implicating privacy rights of third parties), information otherwise generally  
26 unavailable to the public, or which may be privileged or otherwise protected from  
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28 <sup>1</sup> This Order is a HIPAA-compliant “qualified protective order” pursuant to 45 C.F.R.  
§ 164.512(e)(1)(ii),(v).

1 disclosure under state or federal statutes, court rules, case decisions, or common law.  
2 Accordingly, to expedite the flow of information, to facilitate the prompt resolution of  
3 disputes over confidentiality of discovery materials, to adequately protect information  
4 the parties are entitled to keep confidential, to ensure that the parties are permitted  
5 reasonable necessary uses of such material in preparation for and in the conduct of  
6 trial, to address their handling at the end of the litigation, and serve the ends of justice,  
7 a protective order for such information is justified in this matter. It is the intent of the  
8 parties that information will not be designated as confidential for tactical reasons and  
9 that nothing be so designated without a good faith belief that it has been maintained in  
10 a confidential, non-public manner, and there is good cause why it should not be part of  
11 the public record of this case.

12 2. DEFINITIONS

13 2.1 Action: Creative Care, Inc. v. Connecticut General Life Ins. Co. et al.,  
14 Case No. 2:16-cv-09056-DMG-AGR (C.D. Cal.).

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation  
16 of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
18 how it is generated, stored or maintained) or tangible things that qualify for protection  
19 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
20 Cause Statement.

21 2.4 Counsel: Outside Counsel of Record and In-House Counsel (as well as  
22 their support staff).

23 2.5 Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 “CONFIDENTIAL.”

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

3 2.7 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
5 expert witness in this Action. Unless specifically agreed upon by the Parties, the term  
6 “Expert” does not include consultants, or individuals associated with lobbying firms,  
7 trade groups, advocacy groups, or other similar organizations.

8 2.8 In-House Counsel: attorneys who are employees of a party to this Action.  
9 In-House Counsel does not include Outside Counsel of Record or any other outside  
10 counsel.

11 2.9 Non-Party: any natural person, partnership, corporation, association, or  
12 other legal entity not named as a Party to this action.

13 2.10 Outside Counsel of Record: attorneys who are not employees of a party  
14 to this Action but are retained to represent or advise a party to this Action and have  
15 appeared in this Action on behalf of that party or are affiliated with a law firm which  
16 has appeared on behalf of that party, and includes support staff.

17 2.11 Party: any party to this Action.

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
23 and their employees and subcontractors. Unless specifically agreed upon by the  
24 Parties, the term “Professional Vendors” does not include consultants, or individuals  
25 associated with lobbying firms, trade groups, advocacy groups, or other similar  
26 organizations.

27 2.14 Protected Material: any Disclosure or Discovery Material that is  
28 designated as “CONFIDENTIAL.”

1           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
2 from a Producing Party.

3  
4       3.     SCOPE

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

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

12       4.     DURATION

13          Even after final disposition of this litigation, the confidentiality obligations  
14 imposed by this Order shall remain in effect until a Designating Party agrees  
15 otherwise in writing or a court order otherwise directs. Final disposition shall be  
16 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
17 or without prejudice; and (2) final judgment herein after the completion and  
18 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
19 including the time limits for filing any motions or applications for extension of time  
20 pursuant to applicable law.

21       5.     DESIGNATING PROTECTED MATERIAL

22           5.1 Exercise of Restraint and Care in Designating Material for Protection.  
23 Each Party or Non-Party that designates information or items for protection under this  
24 Order must take care to limit any such designation to specific material that qualifies  
25 under the appropriate standards. The Designating Party must designate for protection  
26 only those parts of material, documents, items, or oral or written communications that  
27 qualify so that other portions of the material, documents, items, or  
28

1 communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in  
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
14 under this Order must be clearly so designated before the material is disclosed or  
15 produced.

16 Designation in conformity with this Order requires:

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

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

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

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

11 (c) for information produced in some form other than documentary and for  
12 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  
15 protection, the Producing Party, to the extent practicable, shall identify the protected  
16 portion(s).

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

## 23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
28 resolution process under Local Rule 37.1 et seq.

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

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9       7.     ACCESS TO AND USE OF PROTECTED MATERIAL

10           7.1   Basic Principles. A Receiving Party may use Protected Material that is  
11 disclosed or produced by another Party or by a Non-Party in connection with this  
12 Action only for prosecuting, defending, or attempting to settle this Action. Such  
13 Protected Material may be disclosed only to the categories of persons and under the  
14 conditions described in this Order. When the Action has been terminated, a Receiving  
15 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

19           7.2   Disclosure of “CONFIDENTIAL” Information or Items. Unless  
20 otherwise ordered by the court or permitted in writing by the Designating Party, a  
21 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
22 only to:

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

26           (b)   the officers, directors, and employees (including In-House Counsel) of  
27 the Receiving Party to whom disclosure is reasonably necessary for this Action;



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

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

6 (f) Professional Vendors to whom disclosure is reasonably necessary for  
7 this Action and who have signed the “Acknowledgment and Agreement to Be Bound”  
8 (Exhibit A);

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

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

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

22 Other than the limited individuals and entities identified in subsections (a)  
23 through (i) of this Section 7.2, a Receiving Party may not disclose any item designated  
24 “CONFIDENTIAL” or information contained therein to any other person or entity  
25 including, *inter alia* attorneys, law firms, lobbying firms, insurance companies,  
26 healthcare providers, patients, consultants, trade groups, advocacy groups or other  
27 associations.

28

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2 OTHER LITIGATION

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

6 (a) promptly notify in writing the Designating Party. Such notification shall  
7 include a copy of the subpoena or court order;

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

12 (c) cooperate with respect to all reasonable procedures sought to be pursued  
13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with  
15 the subpoena or court order shall not produce any information designated in this  
16 action as “CONFIDENTIAL” before a determination by the court from which the  
17 subpoena or order issued, unless the Party has obtained the Designating Party’s  
18 permission. The Designating Party shall bear the burden and expense of seeking  
19 protection in that court of its confidential material and nothing in these provisions  
20 should be construed as authorizing or encouraging a Receiving Party in this Action to  
21 disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED  
23 IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a Non-  
25 Party in this Action and designated as “CONFIDENTIAL.” Such information  
26 produced by Non-Parties in connection with this litigation is protected by the  
27 remedies and relief provided by this Order. Nothing in these provisions should be  
28 construed as prohibiting a Non-Party from seeking additional protections.

1 (b) In the event that a Party is required, by a valid discovery request, to  
2 produce a Non-Party's confidential information in its possession, and the Party is  
3 subject to an agreement with the Non-Party not to produce the Non-Party's  
4 confidential information, then the Party shall:

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

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

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

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

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
23 Protected Material to any person or in any circumstance not authorized under this  
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
25 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
26 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
27 persons to whom unauthorized disclosures were made of all the terms of this Order,  
28

1 and (d) request such person or persons to execute the “Acknowledgment and  
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

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

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

15 12. MISCELLANEOUS

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

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

23 12.3 Filing Protected Material. A Party that seeks to file under seal any  
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
25 only be filed under seal pursuant to a court order authorizing the sealing of the  
26 specific Protected Material at issue. If a Party's request to file Protected Material  
27 under seal is denied by the court, then the Receiving Party may file the information in  
28 the public 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 60  
3 days of a written request by the Designating Party, each Receiving Party must return  
4 all Protected Material to the Producing Party or destroy such material. As used in this  
5 subdivision, “all Protected Material” includes all copies, abstracts, compilations,  
6 summaries, and any other format reproducing or capturing any of the Protected  
7 Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
8 must submit a written certification to the Producing Party (and, if not the same person  
9 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
10 category, where appropriate) all the Protected Material that was returned or destroyed  
11 and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
12 compilations, summaries or any other format reproducing or capturing any of the  
13 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
14 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
15 legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
16 attorney work product, and expert work product, even if such materials contain  
17 Protected Material. Any such archival copies that contain or constitute Protected  
18 Material remain subject to this Protective Order as set forth in Section 4  
19 (DURATION).

20 14. Any violation of this Order may be punished by any and all appropriate  
21 measures including, without limitation, contempt proceedings and/or monetary  
22 sanctions.

23  
24 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

25  
26 DATED: June 25, 2018

27 /s/ Gary L. Tysch  
28 GARY L. TYSCH  
LAW OFFICES OF GARY L TYSCH

1 DATED: June 25, 2018

2  
3 /s/ Edward T. Kang

4 EDWARD T. KANG  
5 EMILY COSTIN  
6 ELIZABETH A. SPERLING  
7 **ALSTON & BIRD LLP**

8 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

9 DATED: June 26, 2018

10 *Alicia G. Rosenberg*

11  
12 HON. ALICIA G. ROSENBERG  
13 UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under  
5 penalty of perjury that I have read in its entirety and understand the Stipulated  
6 Protective Order that was issued by the United States District Court for the Central  
7 District of California on [date] in the case of \_\_\_\_\_  
8 \_\_\_\_\_ [insert formal name of the case and the number and initials assigned to it by the  
9 court]. I agree to comply with and to be bound by all the terms of this Stipulated  
10 Protective Order and I understand and acknowledge that failure to so comply could  
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
12 that I will not disclose in any manner any information or item that is subject to this  
13 Stipulated Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court  
16 for the Central District of California for the purpose of enforcing the terms of this  
17 Stipulated Protective Order, even if such enforcement proceedings occur after  
18 termination of this action. I hereby appoint \_\_\_\_\_ [print or type  
19 full name] of \_\_\_\_\_ [print or type full address and  
20 telephone number] as my  
21 California agent for service of process in connection with this action or any  
22 proceedings related to enforcement of this Stipulated Protective Order.

23 Date: \_\_\_\_\_

24  
25 City and State where sworn and signed: \_\_\_\_\_

26  
27 Printed name: \_\_\_\_\_

28 Signature: \_\_\_\_\_

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