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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Gary Scherer,**  
Plaintiff,  
  
v.  
  
**City of Los Angeles; Los Angeles  
World Airports; Pacific Coast  
Sightseeing Tours and Charters,  
Inc. and Does 1-10, Inclusive,**  
  
Defendants.

Case No.: 2:17-cv-01110-FMO (KSx)  
**DISCOVERY MATTER**  
**~~Proposed~~ Protective Order**

1 By agreement of the parties hereto, pursuant to the Joint Stipulation  
2 filed concurrently herewith, and for good cause shown, it is hereby  
3 ORDERED:  
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6 1. A. PURPOSES AND LIMITATIONS

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

22 B. GOOD CAUSE STATEMENT

23 This action is likely to involve information: (1) regarding or relating  
24 to the medical condition or ability of Plaintiff Gary Scherer; and (2)  
25 regarding or relating to the contents of Defendants' employee personnel  
26 files. Special protection from public disclosure and from use for any  
27 purpose other than prosecution of this action is warranted. Such confidential  
28 materials and information consist of, among other things, medical records,

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

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18 **2. DEFINITIONS**

19 2.1 Action: the federal lawsuit filed by Plaintiff Gary Scherer  
20 against Defendants City of Los Angeles, Los Angeles World Airports,  
21 Pacific Coast Sightseeing Tours and Charters, Inc.; on February 10, 2017 in  
22 the Central District of California and reflecting case number 2:17-cv-01110-  
23 FMO (KSx).

24 2.2 Challenging Party: a Party or Non-Party that challenges the  
25 designation of information or items under this Order.

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

3 2.4 Counsel: Outside Counsel of Record and House Counsel (as  
4 well as their support staff).

5 2.5 Designating Party: a Party or Non-Party that designates  
6 information or items that it produces in disclosures or in responses to  
7 discovery as “CONFIDENTIAL.”

8 2.6 Disclosure or Discovery Material: all items or information,  
9 regardless of the medium or manner in which it is generated, stored, or  
10 maintained (including, among other things, testimony, transcripts, and  
11 tangible things), that are produced or generated in disclosures or responses  
12 to discovery in this matter.

13 2.7 Expert: a person with specialized knowledge or experience in a  
14 matter pertinent to the litigation who has been retained by a Party or its  
15 counsel to serve as an expert witness or as a consultant in this Action.

16 2.8 House Counsel: attorneys who are employees of a party to this  
17 Action. House Counsel does not include Outside Counsel of Record or any  
18 other outside counsel.

19 2.9 Non-Party: any natural person, partnership, corporation,  
20 association, or other legal entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees of  
22 a party to this Action but are retained to represent or advise a party to this  
23 Action and have appeared in this Action on behalf of that party or are  
24 affiliated with a law firm which has appeared on behalf of that party, and  
25 includes support staff.

26 2.11 Party: any party to this Action, including all of its officers,  
27 directors, employees, consultants, retained experts, and Outside Counsel of  
28 Record (and their support staffs).

1           2.12 Producing Party: a Party or Non-Party that produces Disclosure  
2 or Discovery Material in this Action.

3           2.13 Professional Vendors: persons or entities that provide litigation  
4 support services (e.g., photocopying, videotaping, translating, preparing  
5 exhibits or demonstrations, and organizing, storing, or retrieving data in any  
6 form or medium) and their employees and subcontractors.

7           2.14 Protected Material: any Disclosure or Discovery Material that is  
8 designated as “CONFIDENTIAL.”

9           2.15 Receiving Party: a Party that receives Disclosure or Discovery  
10 Material from a Producing Party.

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13       3.     SCOPE

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

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

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25       4.     DURATION

26           Once a case proceeds to trial, all of the information that was  
27 designated as confidential or maintained pursuant to this protective order  
28 becomes public and will be presumptively available to all members of the

1 public, including the press, unless compelling reasons supported by specific  
2 factual findings to proceed otherwise are made to the trial judge in advance  
3 of the trial. See Kamakana v. City and County of Honolulu, 447 F.3d 1172,  
4 1180-81 (9<sup>th</sup> Cir. 2006) (distinguishing “good cause” showing for sealing  
5 documents produced in discovery from “compelling reasons” standard when  
6 merits-related documents are part of court record). Accordingly, the terms of  
7 this protective order do not extend beyond the commencement of the trial.

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10 **5. DESIGNATING PROTECTED MATERIAL**

11 **5.1 Exercise of Restraint and Care in Designating Material for**  
12 **Protection**. Each Party or Non-Party that designates information or items for  
13 protection under this Order must take care to limit any such designation to  
14 specific material that qualifies under the appropriate standards. The  
15 Designating Party must designate for protection only those parts of material,  
16 documents, items, or oral or written communications that qualify so that  
17 other portions of the material, documents, items, or communications for  
18 which protection is not warranted are not swept unjustifiably within the  
19 ambit of this Order.

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

25 If it comes to a Designating Party’s attention that information or items  
26 that it designated for protection do not qualify for protection, that  
27 Designating Party must promptly notify all other Parties that it is  
28 withdrawing the inapplicable designation.

1           5.2 Manner and Timing of Designations. Except as otherwise  
2 provided in this Order (see, e.g., second paragraph of section 5.2(a) below),  
3 or as otherwise stipulated or ordered, Disclosure or Discovery Material that  
4 qualifies for protection under this Order must be clearly so designated before  
5 the material is disclosed or produced.

6           Designation in conformity with this Order requires:

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

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

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

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

10 5.3 Inadvertent Failures to Designate. If timely corrected, an  
11 inadvertent failure to designate qualified information or items does not,  
12 standing alone, waive the Designating Party's right to secure protection  
13 under this Order for such material. Upon timely correction of a designation,  
14 the Receiving Party must make reasonable efforts to assure that the material  
15 is treated in accordance with the provisions of this Order.

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18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

22 6.2 Meet and Confer. The Challenging Party shall initiate the  
23 dispute resolution process under Local Rule 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding  
25 shall be on the Designating Party. Frivolous challenges, and those made for  
26 an improper purpose (e.g., to harass or impose unnecessary expenses and  
27 burdens on other parties) may expose the Challenging Party to sanctions.  
28 Unless the Designating Party has waived or withdrawn the confidentiality



1 designation, all parties shall continue to afford the material in question the  
2 level of protection to which it is entitled under the Producing Party’s  
3 designation until the Court rules on the challenge.  
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6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1 Basic Principles. A Receiving Party may use Protected Material  
8 that is disclosed or produced by another Party or by a Non-Party in  
9 connection with this Action only for prosecuting, defending, or attempting to  
10 settle this Action. Such Protected Material may be disclosed only to the  
11 categories of persons and under the conditions described in this Order. When  
12 the Action has been terminated, a Receiving Party must comply with the  
13 provisions of section 13 below (FINAL DISPOSITION).

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

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
18 otherwise ordered by the court or permitted in writing by the Designating  
19 Party, a Receiving Party may disclose any information or item designated  
20 “CONFIDENTIAL” only to:

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

24 (b) the officers, directors, and employees (including House  
25 Counsel) of the Receiving Party to whom disclosure is reasonably necessary  
26 for this Action;  
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1 (c) Experts (as defined in this Order) of the Receiving Party to  
2 whom disclosure is reasonably necessary for this Action and who have  
3 signed the “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 jury or trial consultants, mock jurors, and  
7 Professional Vendors to whom disclosure is reasonably necessary for this  
8 Action and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” (Exhibit A);

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

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

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

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

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

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

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

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

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

27 (a) The terms of this Order are applicable to information produced  
28 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such

1 information produced by Non-Parties in connection with this litigation is  
2 protected by the remedies and relief provided by this Order. Nothing in these  
3 provisions should be construed as prohibiting a Non-Party from seeking  
4 additional protections.

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

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

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

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

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

2           If a Receiving Party learns that, by inadvertence or otherwise, it has  
3 disclosed Protected Material to any person or in any circumstance not  
4 authorized under this Stipulated Protective Order, the Receiving Party must  
5 immediately (a) notify in writing the Designating Party of the unauthorized  
6 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
7 Protected Material, (c) inform the person or persons to whom unauthorized  
8 disclosures were made of all the terms of this Order, and (d) request such  
9 person or persons to execute the “Acknowledgment and Agreement to Be  
10 Bound” that is attached hereto as Exhibit A.

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13     11.    INADVERTENT PRODUCTION OF PRIVILEGED OR  
14 OTHERWISE PROTECTED MATERIAL

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

1     12.    MISCELLANEOUS

2           12.1   Right to Further Relief. Nothing in this Order abridges the right  
3 of any person to seek its modification by the Court in the future.

4           12.2   Right to Assert Other Objections. By stipulating to the entry of  
5 this Protective Order no Party waives any right it otherwise would have to  
6 object to disclosing or producing any information or item on any ground not  
7 addressed in this Stipulated Protective Order. Similarly, no Party waives any  
8 right to object on any ground to use in evidence of any of the material  
9 covered by this Protective Order.

10          12.3   Filing Protected Material. A Party that seeks to file under seal  
11 any Protected Material must comply with Civil Local Rule 79-5. Protected  
12 Material may only be filed under seal pursuant to a court order authorizing  
13 the sealing of the specific Protected Material at issue. If a Party's request to  
14 file Protected Material under seal is denied by the court, then the Receiving  
15 Party may file the information in the public record unless otherwise  
16 instructed by the court.

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19     13.    FINAL DISPOSITION

20          After the final disposition of this Action, as defined in paragraph 4,  
21 within 60 days of a written request by the Designating Party, each Receiving  
22 Party must return all Protected Material to the Producing Party or destroy  
23 such material. As used in this subdivision, “all Protected Material” includes  
24 all copies, abstracts, compilations, summaries, and any other format  
25 reproducing or capturing any of the Protected Material. Whether the  
26 Protected Material is returned or destroyed, the Receiving Party must submit  
27 a written certification to the Producing Party (and, if not the same person or  
28 entity, to the Designating Party) by the 60 day deadline that (1) identifies

1 (by category, where appropriate) all the Protected Material that was returned  
2 or destroyed and (2)affirms that the Receiving Party has not retained any  
3 copies, abstracts, compilations, summaries or any other format reproducing  
4 or capturing any of the Protected Material. Notwithstanding this provision,  
5 Counsel are entitled to retain an archival copy of all pleadings, motion  
6 papers, trial, deposition, and hearing transcripts, legal memoranda,  
7 correspondence, deposition and trial exhibits, expert reports, attorney work  
8 product, and consultant and expert work product, even if such materials  
9 contain Protected Material. Any such archival copies that contain or  
10 constitute Protected Material remain subject to this Protective Order as set  
11 forth in Section 4 (DURATION).

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

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20 DATED: April 10, 2017



21  
22 KAREN L. STEVENSON

23 UNITED STATES MAGISTRATE JUDGE  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name],  
4 of \_\_\_\_\_ [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 \_\_\_\_\_ in the case of Gary Scherer v. City of Los  
8 Angeles; Los Angeles World Airports; Pacific Coast Sightseeing Tours and  
9 Charters, Inc., Case No.: 2:17-cv-01110-FMO (KS). I agree to comply with and to  
10 be bound by all the terms of this Stipulated Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and  
12 punishment in the nature of contempt. I solemnly promise that I will not disclose  
13 in any manner any information or item that is subject to this Stipulated Protective  
14 Order to any person or entity except in strict compliance with the provisions of  
15 this Order.

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

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25 Date: \_\_\_\_\_

26 City and State where sworn and signed: \_\_\_\_\_

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

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