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NOTE CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ADEL F. SAMAAAN, M.D., an individual  
Plaintiff

vs.

BLUE CROSS OF CALIFORNIA, dba  
ANTHEM BLUE CROSS and related  
entity names; and Does 1 through 100;  
Defendants

Case No. 2:17-cv-01730-DSF (AGRx)  
*Honorable Dale S. Fischer and  
Honorable Alicia G. Rosenberg,  
Magistrate Judge*

NOTE CHANGES MADE BY THE COURT

~~PROPOSED~~ ORDER ADOPTING  
STIPULATED PROTECTIVE  
ORDER RE PRODUCTION AND  
USE OF CONFIDENTIAL  
DOCUMENTS

Complaint Filed: March 3, 2017

NOTE CHANGES MADE BY THE COURT

WHEREAS, the Parties in the above referenced matter have submitted a  
Stipulated Protective Order Re Production and Use of Confidential Documents on  
April 4, 2017, and good cause appearing therefore, the Court ~~HEREBY ADOPTS~~  
~~SAID PROTECTIVE ORDER~~ and ORDERS AS FOLLOWS:

The Parties' Protective Order shall govern the disclosure and use of  
confidential documents <sup>as modified by the court</sup> in discovery.

DATED: 4/6/2017

*Alicia G. Rosenberg*  
The Honorable Alicia G. Rosenberg

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MANDATORY CHAMBERS COPY

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**ANTHEM BLUE CROSS**

13  
14 **UNITED STATES DISTRICT COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

17 **ADEL F. SAMAAAN, M.D., an individual** }  
18 **Plaintiff** }

**Case No. 2:17-cv-01730-DSF (AGRx)**

19 **vs.**

*Honorable Dale S. Fischer and  
Honorable Alicia G. Rosenberg,  
Magistrate Judge*

20 **BLUE CROSS OF CALIFORNIA, dba** }  
21 **ANTHEM BLUE CROSS and related** }  
22 **entity names; and Does 1 through 100;** }

**STIPULATED PROTECTIVE  
ORDER RE PRODUCTION AND  
USE OF CONFIDENTIAL  
DOCUMENTS**

23 **Defendants**

24 **Complaint Filed: March 3, 2017**

25 **IT IS HEREBY STIPULATED** by and between the Parties Plaintiff, Adel F.  
26 Samaan, M.D., (“Samaan”) and Defendant, Blue Cross of California doing business as  
27 Anthem Blue Cross (“Anthem”); (together, the “Parties”), by and through their  
28 respective counsel of record, that in order to facilitate the exchange of information

15

1 and documents which may be subject to confidentiality limitations on disclosure due  
2 to state and federal laws, and privacy rights, the Parties stipulate as follows:

3 1. Definition

4 a. "Action" shall refer to the above-titled action, United States District  
5 Court, Central District of California, Case No. 2:17-cv-01730-DSF  
6 (AGRx).

7 b. "Confidential Material" shall mean Material (regardless of how  
8 generated, stored, or maintained) or tangible things that is designated as  
9 "CONFIDENTIAL." "Confidential Material" means information  
10 (regardless of how it is generated, stored or maintained) or tangible  
11 things that qualify for protection under Federal Rule of Civil Procedure  
12 26(c), including but not limited to, information the Producing Party  
13 believes in good faith to be protected under relevant provisions of  
14 applicable law regarding confidential business, competitive or privacy  
15 information, trade secret information, non-public financial or business  
16 information, or private health or personal information protected from  
17 disclosure under the health Insurance Portability and Accountability Act  
18 of 1996 ("HIPPA"), 42 U.S.C. §1330, et seq., California Health & Safety  
19 Code § 1280.15, the California Confidentiality of Medical Information  
20 Act, Cal. Civ. Code §56, et seq. or the Lanterman-Petris-Short Act,  
21 Welfare & Institution Code § 5000, et seq., which the Producing Party is  
22 prohibited from revealing or would not normally reveal to third parties  
23 except in confidence, or has undertaken with others to maintain its  
24 confidence. Material may also be designated as confidential if it relates  
25 to or describes information supplied in any form, or any portion thereof,  
26 that identifies the Parties participants, members or beneficiaries in any  
27 manner and relates to the past, present, or future care, services, or  
28 supplies relating to the physical or mental health or condition of such

1 individual, the provision of health care to such individual, or the past,  
2 present, or future payment for the provision of health care to such  
3 individual. Confidential Material includes, but is not limited to, medical  
4 bills, claims forms, charge sheets, medical records, medical charts, test  
5 results, notes, dictation, invoices, itemized billing statements, remittance  
6 advice forms, explanations of benefits, checks, notices, and requests for  
7 information or documentation related to Parties participants or  
8 beneficiaries, as well as any summaries or compilations of the  
9 information contained in these documents, to the extent that such  
10 summaries or compilations themselves include Confidential Material.  
11 Confidential Material is intended to encompass all documents or  
12 information regarding individuals subject to the Standards for Privacy of  
13 Individually Identifiable Health Information, 45 CFR parts 160 and 164,  
14 promulgated pursuant to the Health Insurance Portability and  
15 Accountability Act, or other similar statutory or regulatory privacy  
16 protections. Confidential Material shall include, but is not limited to,  
17 records that contain any of the following participant, patient, or member  
18 identifiers:

- 19 (1) names;
- 20 (2) all geographic subdivisions smaller than a state, including street  
21 address, city, county, precinct, and zip code;
- 22 (3) all elements of dates (except year) for dates directly related to an  
23 individual, including birth date, admission date, discharge date,  
24 age, and date of death;
- 25 (4) telephone number;
- 26 (5) fax number;
- 27 (6) electronic email address;
- 28 (7) social security numbers;

- 1 (8) medical record number;
- 2 (9) health plan beneficiary numbers;
- 3 (10) account numbers;
- 4 (11) certificate/license numbers;
- 5 (12) vehicle identifiers and serial numbers, including license plate
- 6 numbers;
- 7 (13) device identifiers and serial numbers;
- 8 (14) web universal resource locators (URLs”);
- 9 (15) internet protocol (“IP”) address numbers;
- 10 (16) biometric identifiers, including finger and voice prints;
- 11 (17) full face photographic images and any comparable images; and
- 12 (18) any other unique identifying number, characteristic, or code.
- 13 c. “Designating Person” shall refer to a Person (including a Party) that
- 14 designates Material as “Confidential” under this Order.
- 15 d. “Material” shall mean all documents, electronically stored information,
- 16 testimony and discovery responses, including all copies, excerpts and
- 17 summaries thereof, relating to this case.
- 18 e. “Party” or “Parties” shall refer to any party to this action, including all
- 19 counsel (and their support staff).
- 20 f. “Person” shall refer to an include (a) all Parties to the Action; and (b) any
- 21 other person receiving, producing or disclosing Material in the Action, <sup>who</sup>  
*AgR* agrees to be bound by this order.
- 22 g. “Producing Person” shall refer to a Person (including a Party) that
- 23 produces Material in the Action.
- 24 h. “Receiving Person” shall refer to a Person (including a Party) that
- 25 receives Material from a Producing Person.
- 26 i. “Order” shall refer to this Protective Order.
- 27 2. This Order shall govern the handling of all Material provided during the
- 28 course of the Action either voluntarily, as initial disclosures or in response to

1 discovery requests made pursuant to the Federal Rule of Civil Procedure, or as  
2 required or permitted by Court order. The provision of this Order shall apply to any  
3 Person.

4 3. All Material shall be used only for the purpose of preparing for, and  
5 conducting the Action, including any appeals thereof, and shall not be used by the  
6 Parties or any other person for any other purpose. The Court reserves the right to  
7 modify this Order for good cause shown.

8 4. All Material produced in the Action, whether voluntarily or as required  
9 by Court order or under the Federal Rules of Civil Procedure, if such documents or  
10 things contain Confidential Material, shall bear a stamp stating "CONFIDENTIAL"  
11 on each page of any such document or on a sticker affixed to any such tangible thing.  
12 It shall be the responsibility of the Producing Person to cause all Confidential  
13 Material to be stamped by the time such Confidential Material is produced. When  
14 confidential information is disclosed in a form not appropriate for such stamping or  
15 marking, it shall be designated in writing as CONFIDENTIAL at the time it is  
16 delivered to receiving party.

17 5. For information produced in some form other than Documents, and for  
18 any other tangible item, including, without limitation, compact discs or DVD's, the  
19 Designating Party must affix a prominent place on the exterior of the container or  
20 containers in which the Information is stored the legend "Confidential". If only  
21 portion of the information provided warrant protection, the Designating Party, to the  
22 extent applicable, shall identify the "Confidential" portion. When confidential  
23 information is disclosed in a form not appropriate for such stamping or marking, it  
24 shall be designated in writing as CONFIDENTIAL at the time it is delivered to the  
25 receiving party.

26 6. Information or testimony disclosed at a deposition may be designated as  
27 Confidential Material by the person providing such testimony, by a Party, or by a  
28 Producing Person, if such person either:

- 1 a. identifies on the record at the deposition those portions of the testimony
- 2 that are designated as Confidential Material; or
- 3 b. provide written notification to all Parties within thirty (30) calendar days
- 4 of receipt of the transcript of the deposition specifying those pages and
- 5 lines of the transcript that are designated as Confidential Material.

6 The entire transcript of any deposition shall be treated as Confidential Material  
7 until thirty (30) calendar days after the conclusion of the deposition. Each page of  
8 deposition transcript designated as Confidential Material shall be stamped, as set forth  
9 in paragraph 4 above, by the court reporter or counsel.

10 7. Each Party and each Producing Person shall have twenty (20) business  
11 days from the actual receipt of any Material to designate any such Material as  
12 "Confidential." During this 20-business day period, any person receiving any such  
13 Material shall treat the Material as "Confidential" under the terms of this Order.

14 8. Any Material designated as "Confidential" in accordance with this Order  
15 also will render "Confidential" any copies, excerpts, summaries or other documents  
16 reflecting or referring to the substance or contents of such Material.

17 9. Any Party may designate as "Confidential" any document that is  
18 produced or disclosed without such designation by third party, within ten (10)  
19 business days of production of such document (or such other time as may be agreed),  
20 provided that such document contains Confidential Information of a designating Party  
21 and was given to the non-Party on a confidential basis.

22 10. Confidential Material shall be subject to the following restrictions:

- 23 a. Confidential Material shall not be given, shown, made available or
- 24 communicated in any way by the Receiving Party to anyone except those
- 25 person specified in subparagraph 10(b) below to whom it is necessary
- 26 that such Confidential Material be given or shown for the purpose
- 27 permitted under paragraph 3 above.
- 28 b. Except as ordered by the Court, Confidential Material may be disclosed,

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for the purposes set forth in paragraph 3 above, only to a “Qualified Person,” defined as follows:

- (1) counsel of record for the Parties, and attorneys, clerical, paralegal and other staff employed by such counsel, including any outside vendor providing litigation support or photocopying services, who are assisting in the conduct of the Action;
- (2) the Parties and their employees, including in-house counsel, if any, who are actively engaged in assisting and/or advising counsel regarding the conduct of this litigation. Each Party hereto represents that the employee have been (or will be prior to receiving Confidential Materials) informed of the terms of this Protective Order and have agreed (or will agree) prior to receiving any Confidential Materials to be bound by its terms and conditions;
- (3) witnesses and their counsel (other than Parties) in connection with or at any interview, deposition or hearing in the Action, subject to paragraph 11, below;
- (4) such consultants and experts retained by the Parties, or their respective counsel, as they in good faith deem necessary to provide assistance in connection with the conduct of the Action, subject to paragraph 11, below;
- (5) the Court, court personnel, potential jurors, jurors or alternate jurors;
- (6) vendors engaged by counsel of record to perform services in connection with this litigation, e.g., photocopying, imaging, computer data entry, and the like; and
- (7) court reporters and their employees used in connection with the conduct of the Action.



1           11. Each Qualified Person described in paragraph 10(b)(3) or 10(b)(4), above  
2 to whom Confidential Material is disclosed shall first be provided with a copy of this  
3 Order and advised that such Confidential Material is being disclosed pursuant to and  
4 subject to the terms of this Order and that Confidential Material may not be disclosed  
5 other than pursuant to the terms hereof. It shall be the responsibility of counsel  
6 providing such access to provide to each person to whom Confidential Material is  
7 disclosed a copy of this Order. Prior to disclosing Confidential Material to each  
8 person described in subparagraph (10)(b)(4), above, counsel shall cause each such  
9 person to execute a certificate in the form attached as Exhibit A to this Order; Counsel  
10 disclosing Confidential Material to persons under subparagraph (10)(b) shall be  
11 responsible for holding executed certificates.

12           12. No Material that has been designated "Confidential" by this Order, by  
13 any Party or by any Producing Person shall be filed, independently or as an  
14 attachment or exhibit to any other document, in the public court file except as  
15 provided in Civil Local Rule 79-5 and the Honorable Dale S. Fischer Sealed  
16 Document Pilot Program.

17           13. In the event it becomes necessary at a deposition ~~or hearing~~<sup>g</sup> to show any  
18 Confidential Material to a witness, as described in subparagraph 10(b), above, any  
19 testimony related to the Confidential Material shall be deemed to be Confidential  
20 Material, and the pages and lines of the transcript that set forth such testimony shall  
21 be stamped as set forth in paragraph 4 of this Order.

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22           14. No Party concedes that any Material designated by any other person as  
23 Confidential Material does in fact contain or reflect confidential information or has  
24 been properly designated as Confidential Material. There shall be no prejudice to the  
25 right of a Party to seek a determination by the Court of whether any particular  
26 document or information should be subject to the terms of this Order.

27           15. Unless a prompt challenge to a Designating Person's confidentiality  
28 designation is necessary to avoid foreseeable substantial unfairness, unnecessary

1 economic burdens, or a later significant disruption or delay of the litigation, a Party  
2 does not waive its right to challenge a confidentiality designation by electing not to  
3 amount a challenge promptly after the original designation is disclosed.

4 16. Meet and Confer.

5 A Party that elects to initiate a challenge to a Designating Person's  
6 confidentiality designation must do so in good faith and must begin the process by  
7 conferring directly (in voice to voice dialogue; other forms of communication are not  
8 sufficient) with counsel for the designating Person. In conferring, the challenging  
9 Party must explain the basis for its belief that the confidentiality designation was not  
10 proper and must give the Designating Person an opportunity to review the designated  
11 material, to reconsider the circumstances, and, if no change in designation is offered,  
12 to explain the basis for the chosen designation. A challenging Party may proceed to  
13 the next stage of the challenge process only if it has engaged in this meet and confer  
14 process first.

15 17. Judicial Intervention.

16 A Party who elects to press a challenge to a confidentiality designation after  
17 considering the justification offered by the Designating Person may file and serve a  
18 motion under Civil Local Rule 37 (and in compliance with Civil Local Rule 79-5 and  
19 the Honorable Dale S. Fischer Sealed Document Pilot Program, if applicable) that  
20 identifies the challenged material and sets forth in detail the basis for challenging.  
21 Each such motion must be accompanied by a competent declaration that sets forth  
22 with specificity the justification for the confidentiality designation that was given by  
23 the Designating Person in the meet and confer dialogue. The burden of persuasion in  
24 any such challenge proceeding shall be on the Designating Person. *Phillips Ex Rel.*  
25 *Byrd v. General Motors Corp.*, (9<sup>th</sup> Cir. 2002) 307 F.3d 1206, 1210-11. Until the  
26 Court rules on the challenge, all Parties shall continue to afford the material in  
27 question the level of protection to which it is entitled under the Producing Person's  
28 designation.

1 18. Subject to paragraph 3, above, should any non-party seek access to  
2 Confidential Material, by request, subpoena or otherwise, the Party or other recipient  
3 of the Confidential Material from whom such access is sought, as applicable, shall  
4 promptly notify the Producing Person who produced such Confidential Material of  
5 such requested access. If any Receiving Person (a) is subpoenaed in another action,  
6 (b) is served with a demand in another action to which he or it is a party, or (c) is  
7 served with any other legal process by one not a party to this Action seeking Material  
8 which was produced and designated as Confidential, the Receiving Person shall give  
9 written notice, by hand, e-mail, or facsimile transmission, within five (5) business  
10 days of receipt of such subpoena, demand, or legal process, to those who produced the  
11 Confidential Material. The Receiving Person shall not produce any of the Producing  
12 Person's Confidential Material, unless ordered by a court to do so, until the later of (a)  
13 at least ten (10) business days after providing the required notice to the Producing  
14 Person, or (b) the date of production specified in, or required by, the subpoena,  
15 demand or other legal process. The Producing Person shall be solely responsible for  
16 asserting any objection to the requested production.

17 19. This Order, insofar as it restricts the communication and use of  
18 Confidential Material, shall continue to be binding throughout and after the  
19 conclusion of the Action, including any appeals. However, when offered in evidence  
20 <sup>or motions more than tangentially related to the merits, /</sup> Confidential Material will become available to the public, <sup>absent a separate</sup> ~~unless good cause~~  
21 ~~is shown~~ <sup>at trial, court order upon motion and compelling reasons shown</sup> in advance of the scheduled trial date to proceed otherwise. In order to  
22 permit a Designating Person to assess whether to move the Court for additional  
23 protection, and if appropriate to file a timely motion, the proponent of the evidence  
24 must give notice of intent to introduce the evidence to counsel for the Designating  
25 Person at least sixty (60) calendar days before trial. Any party may then move the  
26 Court in advance of the trial for an order that the evidence be received in camera or  
27 under other conditions to prevent unnecessary disclosure pursuant to applicable  
28 federal and local rules. The Court will determine whether the proffered evidence

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1 should continue to be treated as Confidential Material and, if so, what protection may  
2 be offered to such Material at trial. Ctr. For Auto Safety v. Chrysler Group,  
3 809 F.3d 1092 (9th Cir. 2016).

4 20. Within sixty (60) calendar days after the conclusion of the Action,  
5 including all appeals, all Confidential Material, copies thereof and documents  
6 reflecting such Confidential Material (other than materials contained in the court's  
7 unsealed/non-sealed records) shall be returned to the Producing Person who produced  
8 such Confidential Material or destroyed, at the discretion of the Producing Person.

9 21. The Court retains jurisdiction for a period of six (6) months after  
10 termination of this Action, to enforce the terms of this Order to make such  
11 amendments, or additions to this Order as it may from time to time deem appropriate  
12 or may be appropriate upon a motion by any Party.

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

21 23. The protection of Confidential Material at trial <sup>may</sup>~~will~~ be addressed in the  
22 pre-trial order.

23 24. Any inadvertent disclosure or production of documents protected by the  
24 attorney-client privilege or work-product protection shall not constitute a waiver of  
25 either any available privilege or protection by the disclosing party. In the event that  
26 the Receiving Party discovers that it has received either attorney-client privilege or  
27 work-product documents, it shall bring that fact to the attention of the Producing  
28 Party immediately upon that discovery. Upon the request of the Producing Party, the  
Receiving Party will promptly disclose the names of any individuals who have read or

1 have had access to the attorney-client privilege or work-product document. No such  
2 inadvertently produced attorney-client privilege or work-product protected document  
3 may be used in evidence against the Producing Party.

4 25. In the event that any Party discover that any Confidential Material has  
5 been disclosed to any person not entitled under this Protective Order to receive such  
6 information, the Party, upon discovering the unauthorized disclosure, shall  
7 immediately (a) inform the other Party of the circumstances of the disclosure; (b)  
8 inform the Receiving Person or entity of the existence and terms of this Protective  
9 Order; (c) make its best efforts to retrieve any unauthorized disclosed documents or  
10 Material; and (d) make its best efforts to obtain an undertaking in the form attached  
11 hereto from the person who was not entitled to receive such information. Such  
12 unauthorized disclosure shall not cause the disclosed information to lose its  
13 confidential status.

14 26. The inadvertent failure to designate information under this Stipulated  
15 Protective Order prior to or at the time of disclosure shall not operate as a waiver of  
16 the Producing Party's right to designate such information under this Order so long as  
17 such Party takes steps to correct the designation of such information within a  
18 reasonable time and as set forth in paragraph 4.

19 27. In the event that Confidential Material is designated as Confidential after  
20 production, the Receiving Party shall employ reasonable efforts to ensure that any  
21 inadvertently disclosed information is subsequently treated as required pursuant to the  
22 terms of this Order.

23 28. After this Stipulation and Protective Order has been signed by counsel  
24 for all Parties, it shall be presented to the Court for entry. Counsel agree to be bound  
25 by the terms set forth herein with regard to any Confidential Materials that have been  
26 produced before the Court signs this Stipulation and Protective Order.

27 29. The Parties and all signatories to the Certification attached hereto as  
28 Exhibit A agree to be bound by this Stipulation and Protective Order pending its

1 approval and entry by the Court. In the event that the Court modifies this Stipulation  
2 and Protective , or in the event that the Court enters a different Protective Order, the  
3 Parties agree to be bound by this Stipulation and Protective Order until such time as  
4 the Court may enter such a different Order. It is the Parties' intent to be bound by the  
5 terms of this Stipulation and Protective Order pending its entry so as to allow for  
6 immediate production of Confidential Material under the terms herein.

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**IT IS SO STIPULATED.**

**Dated:** April 4, 2017

Respectfully submitted,

**LYTTON & WILLIAMS LLP**

By: /s/ Richard D. Williams

Richard D. Williams,  
Attorneys for Plaintiff, Adel F. Samaan, M.D.

**Dated:** April 4, 2017

**REED SMITH LLP**

By: /s/ Jonathan D. Gershon

Jonathan D. Gershon,  
Attorneys for Defendant, Blue Cross of  
California dba Anthem Blue Cross

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**EXHIBIT A**

**CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS**

I hereby acknowledge that I, \_\_\_\_\_, am about to receive Confidential Material supplied in connection with the Action, captioned *Adel F. Samaan, M.D. v. Blue Cross of California dba Anthem Blue Cross.*, Case No. 2:17-cv-01730-DSF (AGRx). I certify that I understand that the Confidential Material are provided to me subject to the terms and restrictions of the Stipulated Protective Order filed in this Proceeding. I have been a given a copy of the Stipulated Protective Order; I have read it, and I agree to be bound by its terms.

I understand that Confidential Material, as defined in the Stipulated Protective Order, including any notes or other records that may be made regarding any such materials, shall not be disclosed to anyone except as expressly permitted by the Stipulated Protective Order. I will not copy or use, except solely for the purposes of this Action, any Confidential Materials obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Action.

I further understand that I am to retain all copies of all copies of all Confidential Materials provided to me in the Action in a secure manner, and that all copies of such Materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such Materials will be returned to counsel who provided me with such Materials.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this \_\_\_\_ (day) of \_\_\_\_\_ (month), \_\_\_\_\_ (year).

\_\_\_\_\_  
(SIGNATURE)