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25 UNITED STATES DISTRICT COURT
26 CENTRAL DISTRICT OF CALIFORNIA

27 MAO-MSO RECOVERY II, LLC a) CASE NO. 2:17-cv-02557-AB (FFMx)
28 Delaware entity; MSP RECOVERY,) *Judge Andre Birotte Jr.*
29 LLC, a Florida entity; MSPA) *Magistrate Judge Frederick F. Mumm*
30 CLAIMS 1, LLC, a Florida entity,)

31 Plaintiffs,)

32 vs.)

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

33 MERCURY GENERAL, a California)
34 company, its subsidiaries and)
35 affiliates,)

36 Defendants.)

1 1. A. PURPOSES AND LIMITATIONS

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

15 B. GOOD CAUSE STATEMENT

16 This action is likely to involve trade secrets and other valuable commercial,
17 financial, technical and/or proprietary information for which special protection
18 from public disclosure and from use for any purpose other than prosecution of this
19 action is warranted. Such confidential and proprietary materials and information
20 consist of, among other things, information regarding individuals subject to the
21 standards for Privacy of Individually Identifiable Health Information promulgated
22 pursuant to the Health Insurance Portability and Accountability Act (“HIPAA”), or
23 other similar statutory or regulatory privacy protections, confidential business or
24 financial information, information regarding confidential business practices, or
25 other confidential commercial information (including information implicating
26 privacy rights of third parties), information otherwise generally unavailable to the
27 public, or which may be privileged or otherwise protected from disclosure under
28 state or federal statutes, court rules, case decisions, or common law. Accordingly,

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

11 2. DEFINITIONS

12 2.1 Action: *MAO-MSO Recovery II, LLC, et al. v. Mercury General,*
13 Central District of California Case No. 2:17-cv-02557-AB (FFMx).

14 2.2 Challenging Party: a Party or Non-Party that challenges the
15 designation of information or items under this Order.

16 2.3 “Confidential Material”: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection
18 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
19 Cause Statement. Confidential Material includes, but is not limited to, material
20 that identifies the Parties’ participants, members, or beneficiaries in any manner
21 for the claims that are at issue in this Action, and relates to the past, present, or
22 future care, services, or supplies relating to the physical or mental health or
23 condition of such individual, the provision of health care to such individual, or the
24 past, present, or future payment for the provision of health care to such individual,
25 including medical bills, claims forms, charge sheets, medical records, medical
26 charts, test results, notes, dictation, invoices, itemized billing statements,
27 remittance advice forms, explanations of benefits, checks, notices, and requests for
28 information or documentation related to Parties participants or beneficiaries, as

1 well as any summaries or compilations of the information contained in these
2 documents, to the extent that such summaries or compilations themselves include
3 Confidential Material. Confidential Material is intended to encompass all
4 documents or information regarding individuals subject to the standards for
5 Privacy of Individually Identifiable Health Information promulgated pursuant to
6 HIPAA or other similar statutory or regulatory privacy protections, and includes
7 medical records and records that contain any of the following participant, patient,
8 or member identifiers:

- 9 (1) names;
- 10 (2) all geographic subdivisions smaller than a State, including
11 street address, city, county, precinct, and zip code;
- 12 (3) all elements of dates (except year) for dates directly related
13 to an individual, including birth date, admission date,
14 discharge date, age, and date of death;
- 15 (4) telephone number;
- 16 (5) fax number;
- 17 (6) electronic email address;
- 18 (7) social security numbers;
- 19 (8) medical record number;
- 20 (9) health plan beneficiary numbers;
- 21 (10) Health Identification Code (“HIC”) Numbers;
- 22 (11) claim numbers;
- 23 (12) policy numbers;
- 24 (13) account numbers;
- 25 (14) certificate/license numbers;
- 26 (15) vehicle identifiers and serial numbers, including license
27 plate numbers;
- 28 (16) device identifiers and serial numbers;

- 1 (17) web universal resource locators (“URLs”);
2 (18) internet protocol (“IP”) address numbers;
3 (19) biometric identifiers, including finger and voice prints;
4 (20) full face photographic images and any comparable images; and
5 (21) any other unique identifying number, characteristic, or code.

6 2.3 Counsel: Outside Counsel of Record and House Counsel (as well as
7 their support staff).

8 2.4 Designating Party: a Party or Non-Party that designates information
9 or items that it produces in disclosures or in responses to discovery as
10 “CONFIDENTIAL.”

11 2.5 Disclosure or Discovery Material: all items or information, regardless
12 of the medium or manner in which it is generated, stored, or maintained (including,
13 among other things, testimony, transcripts, and tangible things), that are produced
14 or generated in disclosures or responses to discovery in this matter.

15 2.6 Expert: a person with specialized knowledge or experience in a
16 matter pertinent to the litigation who has been retained by a Party or its counsel to
17 serve as an expert witness or as a consultant in this Action.

18 2.7 House Counsel: attorneys who are employees of a party to this
19 Action. House Counsel does not include Outside Counsel of Record or any other
20 outside counsel.

21 2.8 Non-Party: any natural person, partnership, corporation, association,
22 or other legal entity not named as a Party to this action.

23 2.9 Outside Counsel of Record: attorneys who are not employees of a
24 party to this Action but are retained to represent or advise a party to this Action
25 and have appeared in this Action on behalf of that party or are affiliated with a law
26 firm which has appeared on behalf of that party, and includes support staff.

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28

1 2.10 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.12 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 3. SCOPE

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

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

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. Final disposition shall be
26 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
27 with or without prejudice; and (2) final judgment herein after the completion and
28 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,

1 including the time limits for filing any motions or applications for extension of
2 time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
22 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
23 under this Order must be clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic
27 documents, but excluding transcripts of depositions or other pretrial or trial
28 proceedings), that the Producing Party affix at a minimum, the legend

1 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
2 contains protected material. If only a portion or portions of the material on a page
3 qualifies for protection, the Producing Party also must clearly identify the
4 protected portion(s) (e.g., by making appropriate markings in the margins).

5 A Party or Non-Party that makes original documents available for inspection
6 need not designate them for protection until after the inspecting Party has indicated
7 which documents it would like copied and produced. During the inspection and
8 before the designation, all of the material made available for inspection shall be
9 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
10 documents it wants copied and produced, the Producing Party must determine
11 which documents, or portions thereof, qualify for protection under this Order.
12 Then, before producing the specified documents, the Producing Party must affix
13 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
14 only a portion or portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected portion(s) (e.g., by making
16 appropriate markings in the margins).

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

20 (c) for information produced in some form other than documentary and for
21 any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information is stored the
23 legend “CONFIDENTIAL.” If only a portion or portions of the information
24 warrants protection, the Producing Party, to the extent practicable, shall identify
25 the protected portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such

1 material. Upon timely correction of a designation, the Receiving Party must make
2 reasonable efforts to assure that the material is treated in accordance with the
3 provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37.1 et seq.

10 6.3 The burden of persuasion in any such challenge proceeding shall be
11 on the Designating Party. Frivolous challenges, and those made for an improper
12 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
13 parties) may expose the Challenging Party to sanctions. Unless the Designating
14 Party has waived or withdrawn the confidentiality designation, all parties shall
15 continue to afford the material in question the level of protection to which it is
16 entitled under the Producing Party's designation until the Court rules on the
17 challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is
20 disclosed or produced by another Party or by a Non-Party in connection with this
21 Action only for prosecuting, defending, or attempting to settle this Action. Such
22 Protected Material may be disclosed only to the categories of persons and under
23 the conditions described in this Order. When the Action has been terminated, a
24 Receiving Party must comply with the provisions of section 13 below (FINAL
25 DISPOSITION).

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

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

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
4 IN OTHER LITIGATION

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

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

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

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

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

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

26 (a) The terms of this Order are applicable to information produced by a
27 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
28 produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 the person or persons to whom unauthorized disclosures were made of all the terms
2 of this Order, and (d) request such person or persons to execute the
3 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
4 A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

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

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

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

26 12.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material
28 may only be filed under seal pursuant to a court order authorizing the sealing of the

1 specific Protected Material at issue. If a Party's request to file Protected Material
2 under seal is denied by the court, then the Receiving Party may file the information
3 in the public record unless otherwise instructed by the court.

4 13. FINAL DISPOSITION

5 After the final disposition of this Action, as defined in paragraph 4, within
6 60 days of a written request by the Designating Party, each Receiving Party must
7 return all Protected Material to the Producing Party or destroy such material. As
8 used in this subdivision, "all Protected Material" includes all copies, abstracts,
9 compilations, summaries, and any other format reproducing or capturing any of the
10 Protected Material. Whether the Protected Material is returned or destroyed, the
11 Receiving Party must submit a written certification to the Producing Party (and, if
12 not the same person or entity, to the Designating Party) by the 60 day deadline that
13 (1) identifies (by category, where appropriate) all the Protected Material that was
14 returned or destroyed and (2) affirms that the Receiving Party has not retained any
15 copies, abstracts, compilations, summaries or any other format reproducing or
16 capturing any of the Protected Material. Notwithstanding this provision, Counsel
17 are entitled to retain an archival copy of all pleadings, motion papers, trial,
18 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
19 and trial exhibits, expert reports, attorney work product, and consultant and expert
20 work product, even if such materials contain Protected Material. Any such archival
21 copies that contain or constitute Protected Material remain subject to this
22 Protective Order as set forth in Section 4 (DURATION).

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

26 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

27 DATED: July 14, 2017

28 /S/FREDERICK F. MUMM
HON. FREDERICK F. MUMM
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of *MAO-MSO Recovery II, LLC, et al. v. Mercury General*,
Case No. 2:17-cv-02557-AB (FFMx). I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge
that failure to so comply could expose me to sanctions and punishment in the
nature of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____