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10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 ARISTIDES FRANCISCO, individually
 and on behalf of all others similarly
 14 situated,

15 Plaintiff,

16 v.

17 EMERITUS CORPORATION, an
 unknown corporation; BROOKDALE
 18 SENIOR LIVING COMMUNITIES,
 INC., an unknown corporation, and
 19 DOES 1 through 50, inclusive,

20 Defendants.

Case No.: CV 17-02871 BRO (SSx)

[Discovery Document: Referred to
 Magistrate Judge Suzanne H. Segal,
 Crtrm. 590]

**STIPULATED PROTECTIVE
 ORDER**

Date Filed: March 16, 2017
 Date Removed: April 14, 2017
 Trial Date: None Set

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
6 to enter the following Stipulated Protective Order. The parties acknowledge that
7 this 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
9 extends only to the limited information or items that are entitled to confidential
10 treatment under the applicable legal principles. The parties further acknowledge,
11 as set forth in Section 12.3, below, that this Stipulated Protective Order does not
12 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets
13 forth the procedures that must be followed and the standards that will be applied
14 when a party seeks permission from the court to file material under seal.

15 **B. GOOD CAUSE STATEMENT**

16 This action is likely to involve private third-party information and trade
17 secrets and/or proprietary information for which special protection from public
18 disclosure and from use for any purpose other than prosecution of this action is
19 warranted. Such confidential and proprietary materials and information consist
20 of, among other things, confidential business or financial information,
21 information regarding confidential business practices, or other confidential
22 information (including information implicating privacy rights of third parties),
23 information otherwise generally unavailable to the public, or which may be
24 privileged or otherwise protected from disclosure under state or federal statutes,
25 court rules, case decisions, or common law. Accordingly, to expedite the flow of
26 information, to facilitate the prompt resolution of disputes over confidentiality of
27 discovery materials, to adequately protect information the parties are entitled to
28 keep confidential, to ensure that the parties are permitted reasonable necessary

1 uses of such material in preparation for and in the conduct of trial, to address
2 their handling at the end of the litigation, and serve the ends of justice, a
3 protective order for such information is justified in this matter. It is the intent of
4 the parties that information will not be designated as confidential for tactical
5 reasons and that nothing be so designated without a good faith belief that it has
6 been maintained in a confidential, non-public manner, and there is good cause
7 why it should not be part of the public record of this case.

8 2. DEFINITIONS

9 2.1 Action: The instant action: *Francisco v. Emeritus Corporation et al.*,
10 Case No. CV 17-02871 BRO (SSx).

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation
12 of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
14 how it is generated, stored or maintained) or tangible things that qualify for
15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
16 the Good Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
18 their support staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or
20 items that it produces in disclosures or in responses to discovery as
21 “CONFIDENTIAL.”

22 2.6 Disclosure or Discovery Material: all items or information, regardless
23 of the medium or manner in which it is generated, stored, or maintained
24 (including, among other things, testimony, transcripts, and tangible things), that
25 are produced or generated in disclosures or responses to discovery in this matter.

26 2.7 Expert: a person with specialized knowledge or experience in a matter
27 pertinent to the litigation who has been retained by a Party or its counsel to serve
28 as an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent or advise a party to this Action
8 and have appeared in this Action on behalf of that party or are affiliated with a
9 law firm which has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and
12 their support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits
17 or demonstrations, and organizing, storing, or retrieving data in any form or
18 medium) and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 3. SCOPE

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

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

3 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

26 If it comes to a Designating Party's attention that information or items that
27 it designated for protection do not qualify for protection, that Designating Party
28

1 must promptly notify all other Parties that it is withdrawing the inapplicable
2 designation.

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

8 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in deposition or in other pretrial or trial
2 proceedings, that the Party offering or sponsoring the testimony identify on the
3 record, before the close of the deposition, hearing, or other proceeding, all
4 protected testimony. When it is impractical to identify separately each portion of
5 testimony that is entitled to protection, and when it appears that substantial
6 portions of the testimony may qualify for protection, the Party that sponsors,
7 offers, or gives the testimony may invoke on the record (before the deposition or
8 proceeding is concluded) a right to have up to 20 days to identify the specific
9 portions of the testimony as to which protection is sought. Only those portions of
10 the testimony that are appropriately designated for protection within the 20 days
11 shall be covered by the provisions of this Stipulated Protective Order. Until the
12 passage of 20 days, the entire transcript shall be treated as “CONFIDENTIAL”
13 pursuant to this Order.

14 (c) for information produced in some form other than documentary
15 (including electronic data) and for any other tangible items, that the Producing
16 Party affix in a prominent place on the exterior of the container or containers in
17 which the information is stored the legend “CONFIDENTIAL.” If only a portion
18 or portions of the information warrants protection, the Producing Party, to the
19 extent practicable, shall identify the protected portion(s).

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

26 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS
27
28

1 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
2 designation of confidentiality at any time that is consistent with the Court’s
3 Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
5 resolution process pursuant to Local Rule 37-1.

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

25 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated
28 “CONFIDENTIAL” only to:

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

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who
13 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

26 (i) any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.
28

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 this
5 Action as “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

1 provisions should be construed as prohibiting a Non-Party from seeking
2 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
11 Protective Order in this Action, the relevant discovery request(s), and a
12 reasonably specific 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)

1 inform the person or persons to whom unauthorized disclosures were made of all
2 the terms 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
4 Exhibit 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
14 disclosure of a communication or information covered by the attorney-client
15 privilege or work product protection, the parties may incorporate their agreement
16 into this Stipulated Protective Order.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of
19 any 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 and with any
28 pertinent orders of the assigned District Judge and Magistrate Judge. Protected

1 Material may only be filed under seal pursuant to a court order authorizing the
2 sealing of the specific Protected Material at issue. If a Party's request to file
3 Protected Material under seal is denied by the court, then the Receiving Party
4 may file the information in the public record unless otherwise instructed by the
5 court.

6 13. FINAL DISPOSITION

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

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

28 **IT IS SO STIPULATED.**

1 DATED: September 11, 2017 YOON LAW, APC

2
3 By: /s/ Stephanie E. Yasuda
4 Kenneth H. Yoon
5 Stephanie E. Yasuda
6 Attorneys for Plaintiff Aristides Francisco

7 DATED: September 11, 2017 LITTLER MENDELSON, P.C.

8
9 By: /s/ Shannon R. Boyce
10 J. Kevin Lilly
11 Shannon R. Boyce
12 Rachel T. Segal
13 Attorneys for Defendants
14 Emeritus Corporation and
15 Brookdale Senior Living Communities, Inc.

16 **ATTESTATION REGARDING SIGNATURES**

17 I, Stephanie E. Yasuda, attest pursuant to L.R. 5-4.3.4(a)(2)(i) that all
18 signatories listed, and on whose behalf the filing is submitted, concur in the
19 filing’s content and have authorized the filing.

20 DATED: September 12, 2017 /s/ Stephanie E. Yasuda

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 penalty of perjury
5 that I have read in its entirety and understand the Protective Order that was issued
6 by the United States District Court for the Central District of California on
7 _____ in the case of *Francisco v. Emeritus Corporation*
8 *et al.*, Case No. CV 17-02871 BRO (SSx). I agree to comply with and to be
9 bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose
12 in any manner any information or item that is subject to this Protective Order to
13 any person or entity except in strict compliance with the provisions of this Order.

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

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____