

CHAMBERS COPY

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 13 UNITED HEALTHCARE SERVICES, INC.

NOTE CHANGES MADE BY THE COURT

14  
 15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA  
 17

18 IV SOLUTIONS, INC., a California  
 19 corporation,

20 Plaintiff,

21 v.

22 UNITED HEALTHCARE SERVICES,  
 INC., a Minnesota corporation; and  
 23 DOES 1 through 500, inclusive,

24 Defendants.

Case No. 2:17-CV-03974-  
 MWF(AGR~~x~~)

**STIPULATION FOR ENTRY OF PROTECTIVE ORDER**

NOTE CHANGES MADE BY THE COURT

[Honorable Michael W. Fitzgerald]

1 **STIPULATION**

2 **WHEREAS**, plaintiff IV Solutions, Inc. (“Plaintiff”), and defendant United  
3 HealthCare Services, Inc. (“Defendant”) acknowledge and agree that, in the course  
4 of this litigation, Parties (as that term is defined below) may produce, exchange  
5 and/or copy records and documents that may contain sensitive personal information  
6 or trade secrets,<sup>1</sup> proprietary, or confidential information. The documents may  
7 include medical records, financial records, records of business transactions,  
8 including proprietary information, and other privileged information. Parties may  
9 also give deposition testimony and answer written discovery during the course of  
10 this litigation. This list is illustrative and is not, nor intended to be, exhaustive.

11 **WHEREAS**, said documents and records may contain information that may  
12 be protected by, among other things, the privacy rights in the California  
13 Constitution, privacy rights in the Health Insurance Portability and Accountability  
14 Act (HIPAA), and trade secret laws protecting privacy and proprietary,  
15 confidential, and trade secret information.

16 **WHEREAS**, the purpose of this protective order is to: (a) protect the  
17 confidentiality of the information that may be produced in documents, written  
18 discovery responses, and deposition testimony; and (b) limit the use of the materials  
19 obtained in the course of this litigation to this litigation.

20 **ACCORDINGLY, IT IS HEREBY AGREED AND STIPULATED** by  
21 and between Plaintiff and Defendant, through their respective counsel, that, during  
22 this action, with respect to the disclosure of any information, documents, or things  
23 obtained by Plaintiff and/or Defendant, where such items are asserted or contain or  
24 comprise trade secret, confidential, or proprietary information, the following

25  
26 <sup>1</sup> Pursuant to California Civil Code § 3426.1, “trade secrets,” as used herein,  
27 “means information, including a formula, pattern, compilation, program, device,  
28 method, technique, or process, that: (1) Derives independent economic value, actual  
or potential, from not being generally known to the public or to other persons who  
can obtain economic value from its disclosure or use; and (2) Is the subject of  
efforts that are reasonable under the circumstances to maintain its secrecy.”

1 procedures shall be employed and the following restrictions shall govern:

2 1. Definitions: For purposes of this Protective Order, the following  
3 definitions shall apply:

4 a. "Confidential Material": Information (regardless of how created,  
5 generated, stored, or maintained) or tangible things that have not  
6 been made public, the disclosure of which the Designating Party  
7 contends could cause harm to the business operations of the  
8 Designating Party or provide improper advantage to others, as  
9 well as information that includes non-public personal or private  
10 information, such as (without limitation) personal health  
11 information.

12 b. "Confidential Attorneys' Eyes Only" Material ("AEO  
13 Material"): Confidential Material that is technical, commercial,  
14 financial, or marketing in nature and that the Designating Party  
15 reasonably and in good faith believes is so highly sensitive that  
16 its disclosure to an employee of a receiving party would reveal  
17 significant business or financial advantages of the Designating  
18 Party. It includes, without limitation, information that the  
19 Designating Party reasonably and in good faith believes relates  
20 to (1) current business/strategic plans; (2) technical product  
21 specifications and information; (3) sales, cost, and price  
22 information including future sales/financial projections; (4) non-  
23 public marketing information including future marketing plans;  
24 (5) detailed sales and financial data; (6) customer or supplier  
25 lists; or (7) other information of competitive, technical,  
26 financial, or commercial significance comparable to the items  
27 listed in this paragraph.

28 c. Challenging Party: A Party that challenges the designation of

1 information or items under this Order.

2 d. Designating Party: A Party that designates information or items  
3 that are produced in connection with this litigation in  
4 disclosures, in responses to discovery, or otherwise as  
5 “Confidential” or “Confidential Attorneys’ Eyes Only” Material.

6 e. Receiving Party: a Party that receives information or items in  
7 connection with this litigation in disclosures, in responses to  
8 discovery, or otherwise.

9 2. This Stipulation for Protective Order shall govern the production, use,  
10 and handling of Confidential Material and AEO Material produced by any person  
11 or entity (whether a party or non-party) that provides discovery in connection with  
12 the above-captioned action (hereinafter referred to as “Parties” or “Party”),  
13 including responses to written discovery and deposition testimony. All  
14 Confidential Material and AEO Material subject to this Protective Order shall be  
15 used solely for the prosecution and/or defense of this action and shall not be used  
16 by any Receiving Party in any litigation other than this action, for business, for  
17 competitive purposes, or for any other purpose whatsoever. The protections  
18 conferred by this Stipulation for Protective Order cover not only Confidential  
19 Material and AEO Material, but also (1) any information copied or extracted from  
20 such Material; (2) all copies, excerpts, summaries, or compilations of such  
21 Material; and (3) any testimony, conversations, or presentations by Parties or their  
22 Counsel that might reveal such Material. However, the protections conferred by  
23 this Stipulation and Order do not cover the following information: (a) any  
24 information that is in the public domain at the time of disclosure to a receiving  
25 Party or becomes part of the public domain after its disclosure to a Receiving Party  
26 as a result of publication not involving a violation of this Order, including  
27 becoming part of the public record through trial or otherwise; and (b) any  
28 information known to the Receiving Party prior to the disclosure or obtained by the

1 Receiving Party after the disclosure from a source who obtained the information  
2 lawfully and under no obligation of confidentiality to the Designating Party.

3 3. Each Designating Party shall designate Confidential Material by  
4 placing a "CONFIDENTIAL" stamp on each page so designated, for each  
5 document or information that, in good faith, the Designating Party believes is  
6 Confidential Material. Any testimony designated as "CONFIDENTIAL" shall be so  
7 designated by a Designating Party at the time of said deposition or within seven (7)  
8 business days of receipt of the deposition transcript, whichever is the later.  
9 Documents and written discovery responses shall be designated as  
10 "CONFIDENTIAL" at the time of production. If timely corrected, an inadvertent  
11 failure to designate qualified information or items does not, standing alone, waive  
12 the Designating Party's right to secure protection under this Order for such  
13 material. Upon timely correction of a designation, the Receiving Party must make  
14 reasonable efforts to assure that the material is treated in accordance with the  
15 provisions of this Order.

16 4. Each Designating Party shall designate AEO Material by placing a  
17 "CONFIDENTIAL ATTORNEYS' EYES ONLY" stamp on each page so  
18 designated, for each document or information that, in good faith, the Designating  
19 Party believes is AEO Material. Any testimony designated as "CONFIDENTIAL  
20 ATTORNEYS' EYES ONLY" shall be so designated by a Designating Party at the  
21 time of said deposition or within seven (7) business days of receipt of the  
22 deposition transcript, whichever is later. Documents and written discovery  
23 responses shall be designated as "CONFIDENTIAL ATTORNEYS' EYES ONLY"  
24 at the time of production. Notwithstanding any other terms of this Protective Order,  
25 a Party may not designate material produced by another Party as AEO Material. If  
26 timely corrected, an inadvertent failure to designate qualified information or items  
27 does not, standing alone, waive the Designating Party's right to secure protection  
28 under this Order for such material. Upon timely correction of a designation, the

1 Receiving Party must make reasonable efforts to assure that the material is treated  
2 in accordance with the provisions of this Order.

3 5. Confidential Material shall not be shown, revealed, released, disclosed,  
4 or communicated in any way to any person or entity, except those listed in  
5 Paragraphs 6 and 10 below, without the advance written authorization of the  
6 Designating Party.

7 6. Confidential Material may only be disclosed to the following:

- 8 a. The Court and its personnel, subject to Paragraph 9 below;
- 9 b. The attorneys of record for the parties to this action, their  
10 respective associates, partners, clerks, paralegals, legal  
11 assistants, secretaries, and other support staff who are actively  
12 engaged in assisting such attorneys in the prosecution or defense  
13 of this action;
- 14 c. Experts retained or consulted by any Party or their counsel as  
15 required to assist in the conduct of this action, to the extent that  
16 counsel of record determines that disclosure is necessary for the  
17 prosecution or defense of this action, provided that prior to  
18 disclosure, any such expert is provided with a copy of this  
19 Protective Order and acknowledges in writing that he or she  
20 agrees to be bound by these terms (see Exhibit A, attached  
21 hereto);
- 22 d. Plaintiff, Defendant and their respective employees, to the  
23 extent that their respective counsel determines that such  
24 disclosure is necessary for the prosecution or defense of the  
25 Actions and the persons to which Confidential Materials are to  
26 be disclosed sign the "Agreement to be Bound by Protective  
27 Order" that is attached as Exhibit A; and
- 28 e. Clerical or ministerial service providers, including outside

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copying services and court reporters, retained by a Party's counsel to assist such counsel in connection with this action.

f. Authors, addressees, or recipients of the Confidential Material.

7. AEO Material shall not be shown, revealed, released, disclosed, or communicated in any way to any person or entity, except those listed in Paragraphs 8 and 10 below, without the advance written authorization of the designating Party.

8. AEO Material may only be disclosed to the following:

- a. The attorneys of record for the Parties to this action, their respective associates, partners, clerks, paralegals, legal assistants, secretaries, and other support staff who are actively engaged in assisting such attorneys in the prosecution or defense of this action;
- b. The Court and its personnel, subject to Paragraph 9 below;
- c. The Designating Party, to the extent that its counsel determines that such disclosure is necessary for the prosecution or defense of this action;
- d. Designated in-house counsel of the Receiving Party (including in-house counsel's support staff) (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A), and (4) as to whom the procedures set forth in paragraph 9, below, have been followed;
- e. The author of the document or material and to anyone shown on the document or material as having received it in the ordinary course of business;
- f. Experts retained or consulted by any Party or their counsel as required to assist in the conduct of this action, to the extent that

1 counsel of record determines that disclosure is necessary for the  
2 prosecution or defense of this action, provided that prior to  
3 disclosure, any such expert is provided with a copy of this  
4 Protective Order and acknowledges in writing that he or she  
5 agrees to be bound by these terms (see Exhibit A, attached  
6 hereto); and

7 g. Such other persons as hereafter may be designated by written  
8 authorization by the Designating Party or by further order of the  
9 Court, provided that prior to disclosure, any such person is  
10 provided with a copy of this Protective Order and acknowledges  
11 in writing that he or she agrees to be bound by these terms (see  
12 Exhibit A, attached hereto).

13 9. Unless otherwise ordered by the Court or agreed to in writing by the  
14 Designating Party, a Receiving Party that seeks to disclose to designated in-house  
15 counsel any information or item that has been designated AEO material pursuant to  
16 paragraph 8(d) first must make a written request to the Designating Party that (1)  
17 sets forth the full name of the designated in-house counsel and the city and state of  
18 his or her residence, and (2) describes the designated in-house counsel's current and  
19 reasonably foreseeable future primary job duties and responsibilities in sufficient  
20 detail to determine if in-house counsel is involved, or may become involved, in any  
21 competitive decision-making.

22 10. Without written permission from the Designating Party or a court  
23 order secured after appropriate notice to all interested persons, a Receiving Party  
24 may not file in the public record any Confidential Material or AEO Material. A  
25 Party that seeks to file under seal any Confidential Material or AEO Material must  
26 comply with Civil Local Rule 79-5 and the Court's Standing Order Re: Protective  
27 Orders and Treatment of Confidential Information. Confidential Material or AEO  
28 Material may only be filed under seal pursuant to a court order authorizing the



1 sealing of the specific Confidential Material or AEO Material at issue.

2 11. Challenging Confidentiality Designations.

3 a. Timing of Challenges. Any Receiving Party may challenge a  
4 designation of confidentiality at any time. Unless a prompt challenge to a  
5 Designating Party's confidentiality designation is necessary to avoid  
6 foreseeable, substantial unfairness, unnecessary economic burdens, or a  
7 significant disruption or delay of the litigation, a Receiving Party does not  
8 waive its right to challenge a confidentiality designation by electing not to  
9 mount a challenge immediately after the original designation is disclosed.

10 b. Meet and Confer. The Challenging Party shall initiate the  
11 dispute resolution process by providing written notice of each designation it  
12 is challenging and describing the basis for each challenge. To avoid  
13 ambiguity as to whether a challenge has been made, the written notice must  
14 recite that the challenge to confidentiality is being made in accordance with  
15 this specific paragraph of the Protective Order. The Challenging Party and  
16 the Designating Party shall attempt to resolve each challenge in good faith  
17 and must begin the process by conferring within 14 days of the date of  
18 service of notice. In conferring, the Challenging Party must explain the basis  
19 for its belief that the confidentiality designation was not proper and must give  
20 the Designating Party an opportunity to review the designated material, to  
21 reconsider the circumstances, and, if no change in designation is offered, to  
22 explain the basis for the chosen designation. A Challenging Party may  
23 proceed to the next stage of the challenge process only if it has engaged in  
24 this meet and confer process first or establishes that the Designating Party is  
25 unwilling to participate in the meet and confer process in a timely manner.

26 c. Judicial Intervention. If the Parties cannot resolve a challenge  
27 without court intervention, the Challenging Party may file a motion (in  
28 compliance with Civil Local Rule 79-5, if applicable) challenging

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confidentiality at any time if there is <sup>sufficient</sup> ~~good~~ cause for doing so, including a  
2 challenge to the designation of a deposition transcript or any portions thereof  
3 Any motion brought pursuant to this provision must be accompanied by a  
4 competent declaration affirming that the movant has complied with the meet  
5 and confer requirements imposed by the preceding paragraph.

6 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. All Parties shall  
10 continue to afford the material in question the level of protection to which it  
11 is entitled under the Producing Party's designation until the court rules on the  
12 challenge.

13 12. A Designating Party will use reasonable efforts to avoid designating,  
14 or to de-designate in a reasonable time after request, any document or information  
15 as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY CONFIDENTIAL" that is  
16 not entitled to such designation or that is generally available to the public. The  
17 Party designating information, documents, materials, or items as "confidential" or  
18 "AEO" bears the burden of establishing the propriety of such designations.

19 13. Subject to the provisions of the Federal Rules of Civil Procedure and  
20 the Federal Rules of Evidence, nothing in this Protective Order shall in any way  
21 limit the uses that the Parties may make of their own Confidential or AEO Material.  
22 To the extent a Designating Party elects to publicly disclose Confidential or AEO  
23 Material in a court filing (by not filing such under seal), all other Parties may do so  
24 likewise.

25 14. Within thirty (30) days of the conclusion of this action, each Receiving  
26 Party shall return all Material designated "CONFIDENTIAL" and/or  
27 "CONFIDENTIAL ATTORNEYS' EYES ONLY" to the Designating Party on  
28 whose behalf such Material was produced or, at the option of the Designating Party,

1 counsel for each Receiving Party shall certify in writing that such material has been  
2 destroyed. Each Receiving Party returning or destroying CONFIDENTIAL and/or  
3 CONFIDENTIAL ATTORNEYS' EYES ONLY Material is responsible for any  
4 costs associated with the return and/or destruction of such Materials.

5 15. If a Receiving Party is served with a subpoena or a court order issued  
6 in other litigation that compels disclosure of any CONFIDENTIAL and/or  
7 CONFIDENTIAL ATTORNEYS' EYES ONLY Material produced by a  
8 Designating Party, the Receiving Party must:

- 9 a. promptly notify in writing the Designating Party. Such  
10 notification shall include a copy of the subpoena or court order;  
11 b. promptly notify in writing the party who caused the subpoena or  
12 order to issue in the other litigation that some or all of the  
13 material covered by the subpoena or order is subject to this  
14 Protective Order. Such notification shall include a copy of this  
15 Stipulated Protective Order; and  
16 c. cooperate with respect to all reasonable procedures sought to be  
17 pursued by the Designating Party whose Protected Material may  
18 be affected.

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

28 17. This Protective Order shall continue to be binding throughout this

1 action and after its conclusion. The final award in this action shall not relieve any  
2 person to whom Confidential Material or AEO Material has been disclosed from  
3 the obligation of maintaining the confidentiality of such information as set forth  
4 herein.

5 18. Nothing herein shall operate as a waiver of the right of any person to  
6 object on any ground to the admissibility of any Confidential Material or AEO  
7 Material in connection with any motions, trial, or arbitration. Nothing herein shall  
8 prevent a witness from reviewing a transcript of his or her deposition testimony and  
9 any exhibits thereto, in accordance with the Federal Rules of Civil Procedure, or  
10 any stipulation placed on the record by counsel.

11 19. All disputes concerning matters falling within the scope of or relating  
12 to the interpretation of this Stipulated Protective Order shall be submitted for ruling  
13 to the above-captioned Court. ~~At any hearing on such submitted matter, all persons~~  
14 ~~not specifically contemplated by Paragraphs 6, 8, and 9 shall be excluded from the~~  
15 ~~hearing.~~

16 20. By entering into this Stipulation for Protective Order, Plaintiff and  
17 Defendant do not waive any right(s) to assert the attorney client privilege, work  
18 product doctrine, financial privacy, or any other objection that could be raised in  
19 response to any request to produce documents, interrogatory, and/or deposition  
20 examination.

21 21. The inadvertent production in discovery of any privileged or otherwise  
22 protected or exempted information, as well as the inadvertent production in  
23 discovery of information without an appropriate designation of confidentiality, shall  
24 not be deemed a waiver or impairment of any claim or privilege or protection  
25 including but not limited to the attorney-client privilege, the protection afforded to  
26 work-product materials or the subject matter thereof, or the confidential nature of  
27 any such information, provided that the producing Party shall immediately notify  
28 the Receiving Party in writing when inadvertent production is discovered. Upon

1 receiving written notice from the producing Party that privileged information or  
2 work-product material has been inadvertently produced, the Receiving Party shall  
3 not duplicate the privileged information, or distribute the privileged information by  
4 any means other than returning it to the producing Party. In addition, once notified  
5 of the inadvertent production of privileged information, the Receiving Party shall, if  
6 such material has previously been disclosed to others by the Receiving Party, take  
7 reasonable steps to obtain all such previously disclosed material and advise such  
8 persons of the claims of privilege, work product, or confidentiality.

9 22. Any violation of the terms of this Protective Order may be punishable  
10 by money damages, interim or final injunctive or other equitable relief, sanctions,  
11 contempt of court citation, or such other or additional relief as deemed appropriate  
12 by the Court. The foregoing remedies shall be in addition to any other common law  
13 or statutory relief available for violation of the terms of this Protective Order.  
14 Nothing herein is intended to expand the authority vested in any Magistrate Judge  
15 to whom a dispute under this Order is assigned.

16 23. Agreeing to produce or receive Material designated as  
17 "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY", or  
18 otherwise complying with the terms of this Protective Order shall not:

- 19 a. Operate as an admission by any Party that any Confidential Material or  
20 AEO Material contains or reflects trade secrets or any other type of  
21 confidential or proprietary information entitled to protection under  
22 applicable law;
- 23 b. Prejudice in any way the rights of any Party to object to the production  
24 of documents it considers not subject to discovery, or operate as an  
25 admission by any party that the restrictions and procedures set forth  
26 herein constitute adequate protection for any particular information  
27 deemed by any party to be Confidential Material or AEO Material;
- 28 c. Prejudice in any way the rights of any Party to object to the

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authenticity or admissibility into evidence of any document, testimony, or the evidence subject to this Protective Order;

- d. Prejudice in any way the rights of any Party to seek a determination by the Court whether any Confidential Material or AEO Material should be subject to the terms of this Protective Order;
- e. Prejudice in any way the rights of any Party to petition the Court for a further protective order, or modification or amendment of this order, relating to any purportedly Confidential Material or AEO Material; or
- f. Prevent any designating party from agreeing to alter or waive the provisions or protections provided for herein with respect to any particular Confidential Material or AEO Material.

**IT IS SO STIPULATED:**


Dated: July 14, 2017


HOGAN LOVELLS US LLP  
MICHAEL M. MADDIGAN  
POOPAK NOURAFCHAN  
LAURA M. GROEN

By: /s/ Michael M. Maddigan  
Michael M. Maddigan  
Attorneys for Defendant United  
Healthcare Services, Inc.

Dated: July 11, 2017

THEODORA ORINGHER PC  
TODD C. THEODORA  
ANDREW G. PROUT

By:   
Timothy J. Hoggem  
Attorneys for Plaintiff IV Solutions,  
Inc.

**IT IS SO ORDERED.**  
DATED: July 20, 2017  
  
UNITED STATES MAGISTRATE JUDGE



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I declare under penalty of perjury that the foregoing is true and correct.

Executed this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, at \_\_\_\_\_  
City, State

DATED: \_\_\_\_\_ BY: \_\_\_\_\_

Signature

Title

Address

City, State, Zip

Telephone Number