

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and for
2 good cause, the Court issues this Protective Order (the “Order”). Unless modified,
3 this Order shall remain in effect through the conclusion of this litigation:

4 **GOOD CAUSE STATEMENT**

5 The parties acknowledge that information produced in discovery,
6 regardless of its designation under this Order, may contain personal and health
7 information subject to the protections of, *inter alia*, the Health Insurance Portability
8 and Accountability Act of 1996, the applicable requirements of the Standards for
9 Privacy of Individually Identifiable Health Information and its implementing
10 regulations issued by the U.S. Department of Health and Human Services (45 C.F.R.
11 Parts 160-64; HIPAA Privacy Regulations), and California Civil Code §§ 56 *et seq.*,
12 and 1798.82 *et seq.*, which protect the confidentiality of individually-identifiable
13 personal and health information. Discovery may also involve trade secrets, customer
14 and pricing lists and other valuable research, development, commercial, financial,
15 technical and/or proprietary information for which special protection from public
16 disclosure and from use for any purpose other than prosecution of this action is
17 warranted.

18 Accordingly, to expedite the flow of information, to facilitate the prompt
19 resolution of disputes over confidentiality of discovery materials, to adequately
20 protect information the parties are entitled or required to keep confidential, to ensure
21 that the parties are permitted reasonable necessary uses of such material in
22 preparation for and in the conduct of trial, to address their handling at the end of the
23 litigation, and to serve the ends of justice, a protective order for such information is
24 justified in this matter. It is the intent of the parties that information will not be
25 designated as confidential for tactical reasons and that nothing be so designated
26 without a good faith belief that it has been maintained in a confidential, non-public
27 manner, and there is good cause why it should not be part of the public record of this
28 case.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS THEREFORE ORDERED THAT:

1. A document constitutes or contains “Confidential Material” when it has been given that designation by the party producing it or by the party to whom the information relates (“the Designating Party”). A party or nonparty may designate documents or information as “Confidential Material” as follows:

a. In the case of documents and information contained in documents, designation must be made by placing the following legend on each page of the document before production:

“CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER.”

b. In the case of discovery responses and information contained in discovery responses, designation must be made by (i) placing a statement at the start or end of the responses specifying that the responses, or part of the responses, are designated Confidential Material, and (ii) placing the following legend on each page (including the caption page) of any discovery response containing designated Confidential Material:

“CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER.”

c. In the case of depositions and hearings, designation of the portions of the transcript (including exhibits) that contain Confidential Material must be made by the Designating Party by: (i) making a statement to that effect on the record in the course of the deposition or hearing; or (ii) sending a letter to all counsel within the time permitted for the review and signing of the deposition by the witness (in the event of a deposition) or within 45 days of receipt of the transcript of the hearing (in the event of a hearing). Once designated, the original and each copy of the transcript that contains Confidential Material must bear (or must be modified by counsel to bear) the following legend on its cover:

“CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER.”

1 2. For purposes of this Order, “Confidential Material” includes the
2 following types of documents and information:

3 a. information that is proprietary or constitutes a trade secret,
4 including, without limitation, information, materials, and other documents reflecting
5 non-public business or financial strategies and confidential competitive information
6 that, if disclosed, could result in prejudice or harm to the disclosing party;

7 b. non-public financial or business information;

8 c. non-public communications with regulators, Departments of
9 Insurance, or other governmental bodies that are intended to be kept confidential or
10 are protected from disclosure by statute or regulation; and

11 d. policyholder-specific information, including private medical
12 information.

13 2.1 Any copies or reproductions, excerpts, summaries, or other documents
14 or media that contain or incorporate Confidential Material as defined above will also
15 be treated as Confidential Material under this Order.

16 2.2 Nothing in this Order will be construed as requiring Defendant to
17 produce any personal or identifying information regarding any individual or any other
18 policyholder, nor policyholder information that is protected from disclosure under
19 applicable state or federal law.

20 3. Confidential Material may be used solely for the purpose of conducting
21 this litigation and not for any other purpose whatsoever. For the purpose of
22 conducting this litigation, Confidential Material may be used by, copied by, exhibited
23 to, or disclosed to the following persons or entities only:

24 a. The parties to this action;

25 b. The parties’ attorneys and their respective employees;

26 c. Any witness from whom testimony is taken or will be taken in this
27 action, except that the witness may be shown copies of Confidential Material only
28

1 during his or her testimony and in preparation for the testimony, and only to the
2 extent

3 relevant to the testimony. The witness may not retain any Confidential Material;

4 d. Consultants, experts, and investigators employed by the parties or
5 their attorneys in the prosecution or defense of any aspect of this litigation;

6 e. Court reporters used in connection with this action and their
7 employees;

8 f. The jury, if any, in the trial of this case; and

9 g. The Court and its staff.

10 4. No disclosure may be made to any person under Paragraphs 3(c), (d) or
11 (e) until that person has executed an “Understanding and Agreement” in the form
12 attached as Exhibit A. With respect to consultants, experts, and investigators
13 employed by the parties to this litigation, Exhibit A must be fully executed by the
14 consultant, expert, or investigator and retained by counsel for the party employing the
15 consultant, expert, or investigator. In the event that any consultant, expert, or
16 investigator employed by the parties to this litigation ceases to be engaged in the
17 preparation of this Action, access by such person to discovery material designated as
18 Confidential shall be terminated. Any such material in the possession of any such
19 person shall be returned or destroyed. The provisions of this Order and the
20 obligations not to disclose any portions of such material shall remain in full force and
21 effect as to all such persons.

22 5. All persons described in paragraphs 2(a) through (f) above are prohibited
23 from disclosing any portion of Confidential Material to any other person, or from
24 using any information obtained from the Confidential Material, except as permitted
25 by this Order.

26 6. Nothing in this Order prevents the use of information that is publicly
27 available.

28

1 7. Any motion papers, briefs, memoranda, affidavits, declaration, exhibits,
2 transcripts, or other papers filed with the Clerk of the Court that contain any
3 Confidential Material must be accompanied by an application to file the papers – or
4 the confidential portion thereof – under seal in compliance with Local Rule 79-5; the
5 application must demonstrate good cause for the under-seal filing. The application
6 shall be directed to the judge to whom the papers are directed. Pending the ruling on
7 the application, the papers or portions thereof subject to the sealing application shall
8 be lodged under seal.

9 8. If any party or nonparty bound by this Order intends to disclose,
10 discuss, or otherwise refer to any Confidential Material in open court at any hearing
11 or trial, that person must notify the Court, the Designating Party, and all other parties
12 to this action of its intention to do so, and must not disclose, discuss, or otherwise
13 refer to the Confidential Material until permitted by the Court.

14 9. A party's inadvertent failure to designate disclosed materials as
15 Confidential Material does not waive its right to do so and may be remedied by
16 prompt written notice upon discovery of the error, in which case the material in
17 question will be subject to the protections of this Order.

18 10. The inadvertent, unintentional, or *in camera* disclosure of Confidential
19 Material shall not be deemed a waiver in whole or in part of any party's claims of
20 confidentiality. Moreover, where a Designating Party has inadvertently produced a
21 document which the Designating Party later claims should not have been produced
22 because of privilege, the Designating Party may at any time require the return of any
23 such document. A request for the return of any document shall identify the document
24 by Bates number and the basis for asserting that the specific document (or portions
25 thereof) is subject to the attorney-client privilege, the work product doctrine, or any
26 other applicable privilege or immunity from discovery, the basis for asserting that the
27 production was inadvertent, and the date of discovery that there had been an
28 inadvertent production. The inadvertent production of any document which a

1 Designating Party later claims should not have been produced because of a privilege
2 will not be deemed to be a waiver of any privilege to which the Designating Party
3 would have been entitled had the privileged document not inadvertently been
4 produced. If a Designating Party requests the return, pursuant to this Paragraph, of
5 any such document from another party, the party to whom the request is made shall
6 within THIRTY (30) days return to the Designating Party all copies of the document
7 within its possession, custody, or control, including all copies in the possession of
8 experts, consultants, or others to whom the document was provided. In the event that
9 only portions of the document contain privileged subject matter, the Designating
10 Party shall substitute a redacted version of the document at the time of making the
11 request for the return of the requested document.

12 11. Nothing herein shall be deemed to waive any applicable privilege or
13 work product protection, nor shall an inadvertent disclosure of material protected by
14 privilege or work product protection constitute a waiver of such privilege or
15 protection.

16 12. Notwithstanding anything to the contrary in this Order, any party may
17 use the following documents or information without restriction, regardless of whether
18 they have been designated as Confidential Material:

- 19 a. its own documents or information;
- 20 b. documents that the party has previously received or sent,
21 including final versions of letters and emails listing the party as a recipient or sender;
22 and
- 23 c. documents or information developed or obtained independently of
24 discovery, including party and non-party discovery, in this action.

25 13. This Order applies with equal force to any and all copies, extracts,
26 compilations, summaries, and oral recitation of Confidential Material.

27 14. Within sixty days of final termination of this action, or sooner if so
28 ordered by this Court, counsel for the party receiving any Confidential Material must

1 transmit all Confidential Material (including all copies) to counsel for the
2 Designating Party.

3 15. A party is not obligated to challenge the propriety of a confidentiality
4 designation at the time it is made. Failure to do so does not preclude a subsequent
5 challenge to the designation; however, any challenge to the designation or disclosure
6 of confidential information must occur within the discovery period established by the
7 District Judge. In the event of a dispute regarding the designation of confidential
8 information, the procedure for obtaining a decision from the Court is that set forth in
9 Local Rule 37. The party challenging the designation (the “Challenging Party”) shall
10 initiate the dispute resolution process under Local Rule 37-1, *et seq.* Any discovery
11 motion must strictly comply with the procedures set forth in Local Rules 37-1, 37-2,
12 and 37-3. The burden of persuasion in any such challenge proceeding shall be on the
13 Designating Party. Frivolous challenges, and those made for an improper purpose
14 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
15 expose the Challenging Party to sanctions. Unless the Designating Party has waived
16 or withdrawn the confidentiality designation, all parties shall continue to afford the
17 material in question the level of protection to which it is entitled under the
18 designation until the Court rules on the challenge. In the event that the Designating
19 Party fails to address the designation of any disputed items in the Local Rule 37 Joint
20 Stipulation, then such documents, testimony or information shall be de-designated in
21 accordance with the Challenging Party’s challenge. If the parties wish to file the Joint
22 Stipulation required by Local Rule 37 under seal, the parties may file a stipulation to
23 that effect or the moving party may file an *ex parte* application making the
24 appropriate request. The parties must set forth good cause in the stipulation or *ex*
25 *parte* application as to why the Joint Stipulation or portions thereof should be filed
26 under seal.

27 16. Once a case proceeds to trial, all of the court-filed information that is to
28 be introduced and was previously designated as confidential and/or kept and

1 maintained pursuant to the terms of a protective order becomes public and will be
2 presumptively available to all members of the public, including the press, unless
3 compelling reasons supported by specific factual findings to proceed otherwise are
4 made to the district judge in advance of the trial. *See, e.g., Hagestad v. Tragesser*, 49
5 F.3d 1430, 1434 (9th Cir. 1995); *San Jose Mercury News, Inc. v. U.S. District Court -*
6 *Northern District*, 187 F.3d 1096, 1102 (9th Cir. 1999); *Kamakana v. City and*
7 *County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good
8 cause” showing for sealing documents produced in discovery and attached to non-
9 dispositive motions from “compelling reasons” standard when merits-related
10 documents are part of the judicial record). Accordingly, the terms of this protective
11 order do not extend beyond the commencement of trial.

12 17. If any Party has obtained Confidential Material under the terms of this
13 Order and receives a request to produce such Confidential Material by subpoena or
14 other compulsory process commanding the production of such Confidential Material,
15 the Party must promptly (within 2 business days) notify the Designating Party via
16 electronic mail and U.S. mail. The notice shall identify the Confidential Material
17 sought, the date set for the production of such subpoenaed information, and unless
18 prohibited by applicable law, a copy of the subpoena or other compulsory process so
19 that the Designating Party, at its sole expense, may take such action as it deems fit to
20 control dissemination of the Confidential Material. If an application for a protective
21 order is made promptly and before the return date, the part shall not produce such
22 Confidential Material prior to receiving the court order or the consent of the
23 Designating Party. In the event that Confidential Material is produced to a non-party
24 to this Order, that material shall still be treated as Confidential Material by the parties
25 to this Order.

26 18. Nothing in this Order shall prevent a party from seeking modification of
27 this Order.
28

1 19. The parties agree that this Order binds them regardless of whether the
2 Order is signed by the Court, unless the Court enters a different protective order in
3 place of this Order.

4 20. The terms of this Order shall survive and remain in effect after
5 termination of this action.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED:



DATED: September 17, 2019

HONORABLE PAUL L. ABRAMS
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

Certification Re Confidential Discovery Materials

I hereby acknowledge that I, _____
[NAME], am about to receive Confidential Material supplied in connection with
Atzin v. Anthem, Inc., et al., Case No.: 2:17-cv-6816 ODW (PLAx). I certify that I
understand the Confidential Material is provided to me subject to the terms and
restrictions of the Stipulated Protective Order filed in the action. I have been 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 material, 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 Material obtained pursuant to this Stipulated
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 Confidential
Material provided to me in the action in a secure manner, and that all copies of such
material are to remain in my personal custody until termination of my participation in
this action, whereupon the copies of such material will be returned to counsel who
provided me with such material.

I declare under penalty of perjury, under the laws of the United States of America,
that the foregoing is true and correct.

Dated: _____

BY: _____

Signature