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 13 CALIFORNIA PHYSICIANS' SERVICE dba
 14 BLUE SHIELD OF CALIFORNIA¹

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

17 BEVERLY OAKS PHYSICIANS
 18 SURGICAL CENTER, LLC, A
 19 California Limited Liability Company,

20 Plaintiff,

21 vs.

22 CALIFORNIA PHYSICIANS
 23 SERVICES dba BLUE SHIELD OF
 24 CALIFORNIA; and Does 1 through
 25 100,

26 Defendants.

No. 2:18-cv-06407-RGK-RAO
 Honorable R. Gary Klausner

**[PROPOSED] STIPULATED HIPAA
 QUALIFIED PROTECTIVE
 ORDER**

¹ Erroneously sued as California Physicians Services dba Blue Shield of California

1 Disclosures and discovery in this Action are likely to involve production of
2 confidential, proprietary, or private information, including protected health
3 information, for which protection from public disclosure and use for any purpose
4 other than litigating this Action may be warranted. Accordingly, pursuant to
5 Federal Rule of Civil Procedure 26(c), 45 C.F.R. § 164.512, and the applicable
6 local rules, the parties stipulate to and petition the court to enter the following
7 Stipulated HIPAA “qualified protective order,” as that term is defined by 45 C.F.R.
8 § 164.512(e)(1)(v).

9 The parties acknowledge that this Order does not confer blanket protections
10 on all disclosures or responses to discovery and that the protection it affords from
11 public disclosure and use extends only to the limited information or items that are
12 entitled to confidential treatment under the applicable legal principles. The parties
13 further acknowledge, as set forth in Paragraph 38 below, that this Stipulated
14 Protective Order does not entitle them to file confidential information under seal;
15 Civil Local Rule 79-5 sets forth the procedures that must be followed and the
16 standards that will be applied when a Party seeks permission from the court to file
17 material under seal.

18 **I. DEFINITIONS**

19 Capitalized terms shall have the meanings ascribed to them in this
20 Definitions Section.

21 1. “Action” means the above-captioned litigation, *Beverly Oaks*
22 *Physicians Surgical Center, LLC v. California Physicians Services dba Blue Shield*
23 *of California*, Case No. 2:18-cv-06407-RGK-RAO, which is currently pending in the
24 United States District Court for the Central District of California, Western Division.

25 2. “Party” or “Parties” means any party to this Action—including each
26 Party’s current and former owners, officers, directors, and employees, and each
27 Party’s Experts and Counsel.
28

1 3. “Court” means the Hon. R. Gary Klausner, or any other judge or
2 magistrate to whom this Action may be assigned, including Court staff participating
3 in the Action.

4 4. “Challenging Party” shall refer to a Party to Non-Party that challenges
5 the designation of information or items under this Order.

6 5. “CONFIDENTIAL” means information (regardless of how it is
7 generated, stored or maintained) or tangible things the party designating or producing
8 it reasonably believes contains or reflects information subject to protection, including
9 without limitation: (1) information protected under the federal Health Insurance
10 Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts
11 160-164) and California Civil Code Sections 56, et seq.; (2) information in the nature
12 of a trade secret, or other research, investigation, development, commercial or
13 operational information of a confidential or proprietary nature; (3) financial,
14 marketing, planning, strategic, investigative, or other internal information, data,
15 analyses, or specifications of a proprietary, confidential or competitive nature; (4)
16 information deemed confidential or non-public by any regulatory body; (5)
17 information otherwise protected by law from disclosure; (6) information entitled to
18 protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure; and/or (7)
19 any other information with respect to which there is a compelling need for
20 confidentiality.

21 Documents designated as “Confidential” shall be limited to documents that
22 have not been made public, which the disclosing party in good faith believes will, if
23 disclosed, have the effect of causing harm to its business or competitive position; or
24 in the case of individuals, shall be limited to documents that reveal personal
25 information, such as contact information, social security numbers, or Protected
26 Health Information (as defined in 45 CFR § 160.103).

27 6. “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” shall
28 mean Discovery Material (regardless of how it is generated, stored, or maintained)

1 or tangible things that contains highly sensitive private information, non-public
2 business or financial information, the disclosure of which would, in the good faith
3 judgment of the party designating the material as “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY,” cause serious and irreparable harm to that party’s
5 business or the business of any of that party’s customers or clients if disclosed to
6 persons allowed to see Confidential material beyond the persons specified in
7 Paragraph 34 below. The parties anticipate that this designation will be used very
8 sparingly.

9 7. “Confidentiality Designation” means the Document’s designation as
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
11 ONLY” pursuant to this Order.

12 8. “Counsel” means the attorneys and paralegals (as well as their Support
13 Staff) who represent a Party in this Action, including In-House Counsel.

14 9. “Designating Party” means a Party or Non-Party that designates
15 Discovery Material produced in this Action as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

17 10. “Disclose” means to reveal, divulge, give, or make available Discovery
18 Material, or any part thereof, or any information contained therein.

19 11. “Discovery Material(s)” means all information, regardless of the
20 medium or manner generated, stored, or maintained—including (without limitation)
21 Documents, testimony, transcripts, or tangible things—that is produced in, or created
22 for the purpose of, disclosures or responses to discovery in this Action.

23 12. “Document” carries the broadest meaning consistent with Federal Rule
24 of Civil Procedure 34, and includes both ESI and paper or hard copy documents.

25 13. “Electronically Stored Information” or “ESI” is defined to be
26 synonymous in meaning and scope to the usage of the term in Rule 34(a) of the
27 Federal Rules of Civil Procedure.

28

1 14. “Expert” means a person who has specialized knowledge or experience
2 in a matter pertinent to this Action—including his or her employees and support
3 personnel, and including firms (and their employees) whose normal business includes
4 the provision of support services to expert witnesses—who is not a Party or an
5 employee of a Party, and who has been retained by a Party or its Counsel to serve as
6 an expert witness or an expert consultant, including without limitation a professional
7 jury or trial consultant retained in connection with this Action.

8 15. “In-House Counsel” means attorneys who are employees of a party to
9 this action. In-House Counsel does not include outside Counsel of record or any
10 other outside counsel.

11 16. “Non-Party” means any natural person, partnership, corporation,
12 association, or other legal entity not named as a Party to this action.

13 17. “Order” means this Stipulated Protective Order.

14 18. “Person” means any natural person, partnership, corporation,
15 association, or other legal entity, as well as its parents, subsidiaries, affiliates, board
16 members, officers, employees, agents, attorneys, and representatives.

17 19. “Producing Party” means a Party or Non-Party that produces disclosure
18 or Discovery Material in this Action.

19 20. “Protected Material” means any Discovery Material that is designated
20 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY,” which designation is not challenged or, if challenged, survives such
22 challenge.

23 21. “Receiving Party” means a Party or Non-Party that receives Discovery
24 Material from a Producing Party in this Action.

25 22. “Support Staff” means litigation support personnel who are employed
26 by, hired by, or retained by Experts and/or Counsel to provide administrative,
27 secretarial, technical, or logistical support (e.g., photocopying, videotaping,
28 transcribing oral testimony, translating, preparing exhibits or demonstrations, and

1 collecting, organizing, storing, or retrieving Documents or data in any form or
2 medium) in connection with this Action.

3 23. "Vendor" means outside persons or entities that are retained to provide
4 litigation support services (e.g., photocopying, videotaping, translating, preparing
5 exhibits or demonstrations, and organizing, storing, or retrieving data in any form or
6 medium) and their employees and subcontractors.

7 **II. SCOPE**

8 24. This Order shall govern the designation and use of all Protected
9 Material.

10 25. The protections conferred by this Order cover not only Protected
11 Material but also: (1) any information copied or extracted from Protected Material;
12 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)
13 any testimony, conversations, or presentations by the Parties or their Counsel that
14 might Disclose Protected Material to persons not authorized to receive such material.
15 However, nothing herein shall impose any restriction on the use or disclosure by a
16 Party or its agent of: (a) its own information; (b) information that was in the public
17 domain at the time of its disclosure to a Receiving Party; (c) information that becomes
18 part of the public domain after its production to a Receiving Party as a result of
19 publication not involving a violation of this Order, or (d) information that lawfully
20 came into the possession of the Party independent of any disclosure or discovery in
21 this Action. However, if the accuracy of the information is confirmed only through
22 the review of Protected Material then the information shall not be considered to be in
23 the public domain.

24 26. Any use of Protected Material at trial shall be governed by a separate
25 agreement or order.

26 **III. Confidential Health Information – HIPAA**

27 27. The Parties to the Proceeding acknowledge that information produced
28 in discovery, regardless of its designation under this Stipulation and Protective Order,

1 may contain personal and health information subject to the protections of, inter alia,
2 the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the
3 applicable requirements of the Standards for Privacy of Individually Identifiable
4 Health Information and its implementing regulations issued by the U.S. Department
5 of Health and Human Services (45 C.F.R. Parts 160-64; HIPAA Privacy
6 Regulations), and California Civil Code §§ 56 *et seq.*, and 1798.82 *et seq.*
7 (collectively “Privacy Laws”), which protect the confidentiality of individually
8 identifiable personal and health information (“Protected Information”).

9 28. Confidential health information shall constitute a subset of
10 CONFIDENTIAL information, and shall be designated as “CONFIDENTIAL” and
11 subject to all other terms and conditions governing the treatment of
12 CONFIDENTIAL material, as set forth herein. In addition, the Parties to the Action
13 and all third-party signatories to this Order agree to take all measures necessary to
14 comply with the requirements of the privacy laws and any other applicable laws
15 governing the privacy of personal and health information. Such measures include,
16 but are not limited to, the development, implementation, maintenance and use of
17 appropriate administrative, technical and physical safeguards, in compliance with the
18 privacy laws and applicable state and federal laws, to preserve the integrity,
19 confidentiality, and availability of Protected Material. The Parties to the Action and
20 all third-party signatories to this Order expressly agree that the citations to the privacy
21 laws in this paragraph are for convenience only and that it remains the obligation of
22 each Party to the Order and third-party signatory to understand and comply with the
23 obligations imposed by the privacy laws and any other potentially applicable state
24 and federal law. This subparagraph shall not prevent a Designating Party from
25 disclosing its own CONFIDENTIAL health information to any person, including its
26 counsel and their partners, associates, paralegals, and clerical and litigation support
27 personnel.

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1 **IV. DESIGNATING PROTECTED MATERIAL**

2 29. Any Party to this Action and any Non-Party producing Documents or
3 providing testimony in this Action shall have the right to designate as
4 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
5 ONLY” and subject to this Order any Discovery Material that the Producing Party in
6 good faith believes constitutes “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
7 – ATTORNEYS’ EYES ONLY” material, as defined herein.

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

15 30. **Manner and Timing of Designations.** Except as otherwise provided in
16 this Order, or as otherwise stipulated or ordered, material qualifies for protection
17 under this Order as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-
18 ATTORNEYS’ EYES ONLY” must be clearly so designated before being Disclosed
19 or produced. The Confidentiality Designation should not obscure or interfere with
20 the legibility of the Protected Material.

21 Designation in conformity with this Order requires:

22 a. For produced Documents (apart from transcripts of depositions or
23 other pretrial proceedings), by imprinting the word(s) “CONFIDENTIAL” or
24 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on the face of each
25 page of a Document so designated;

26 b. For written discovery responses, by imprinting the word(s)
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
28

1 ONLY” next to or above any response to a discovery request or on each page of a
2 response;

3 c. For testimony given in depositions:

4 i. The Designating Party has up to 30 days to identify the
5 specific portions of the testimony as to which protection is sought and to specify the
6 level of protection being asserted. Only those portions of the testimony that are
7 appropriately designated for protection within the 30 days shall be covered by the
8 provisions of this Order. In that case, the Designating Party may designate such
9 transcript or recording or any portion thereof as “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by notifying the court reporter
11 and all parties, in writing, of the specific pages and lines of the transcript or recording
12 that should be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
13 ATTORNEYS EYES ONLY.” All transcripts prepared before the expiration of a
14 30-day period for designation shall be treated during that period as if it had been
15 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
16 entirety unless otherwise agreed. After the expiration of that 30-day period, the
17 transcript shall be treated only as actually designated;

18 ii. Transcript pages containing Protected Material must be
19 separately bound by the court reporter, who must affix to the top of each such page
20 the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS
21 EYES ONLY” as instructed by the Designating Party.

22 iii. If any CONFIDENTIAL or HIGHLY CONFIDENTIAL –
23 ATTORNEYS’ EYES ONLY material is marked as an exhibit, inquired about, or
24 otherwise used at a deposition, the portion of the transcript that relates to such
25 Protected Material shall be automatically treated in accordance with the exhibit’s
26 designation, as CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY, under this Order.

28

1 d. For ESI, either by imprinting the word “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” on any disk or
3 storage medium, or on the face of each page of a Document so designated, or by
4 designating the production as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
5 – ATTORNEYS’ EYES ONLY” in the transmittal cover letter;

6 e. For non-paper media (e.g., videotape, DVD, etc.) by labeling the
7 outside of such non-paper media as “CONFIDENTIAL,” or “HIGHLY
8 CONFIDENTIAL – ATTORNEY EYES’ ONLY.” If only portions of the
9 information or item warrant protection, the Designating Party, to the extent
10 practicable, shall identify the portions containing Protected Material. In the event a
11 Receiving Party generates any electronic copy, “hard copy,” transcription, or printout
12 from any such designated non-paper media, such Receiving Party must treat each
13 copy, transcription, or printout with the same designation and label it in manner
14 effective to ensure proper treatment.

15 **V. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 31. All Discovery Material produced in this Action shall be used by the
17 Receiving Party solely for purposes of the prosecution or defense of this Action and
18 shall not be used by the Receiving Party for any business, commercial, competitive,
19 personal, private or other purpose. Protected Material shall not be Disclosed by the
20 Receiving Party to anyone other than those set forth in Paragraphs 33 and 34, unless
21 as otherwise authorized herein.

22 32. The recipient of any Protected Material that is produced under this Order
23 shall maintain such material in a secure and safe manner that ensures that access is
24 limited to the persons authorized under this Order.

25 33. **“CONFIDENTIAL” material:** Unless otherwise ordered by the Court
26 or permitted in writing by the Designating Party, material designated
27 “CONFIDENTIAL,” and any summaries, extracts, charts or notes made therefrom,
28 and any facts or information contained therein or derived therefrom, may be

1 Disclosed by a Receiving Party only to the following individuals under the following
2 conditions:

- 3 a. Counsel for the Parties and their Support Staff;
- 4 b. The Court;
- 5 c. Court reporters in this Action (whether at depositions, hearings,
6 or any other proceeding);
- 7 d. Those officers, directors, and employees of the Receiving Party
8 that counsel for a Party deems reasonably necessary to aid counsel in the prosecution
9 and defense of this Proceeding; provided, however, that prior to the Disclosure of
10 Protected Materials to any such officer, director, or employee, counsel for the Party
11 making the Disclosure shall deliver a copy of this Stipulation and Protective Order
12 to such person, shall explain that such person is bound to follow the terms of such
13 Order, and shall secure the signature of such person on a statement in the form
14 attached hereto as Exhibit A;
- 15 e. Any person who is indicated, on the face of the Document, to be
16 an author or recipient of the Protected Material, or who otherwise possessed or knew
17 the information;
- 18 f. During depositions or non-trial hearings, witnesses in the Action
19 who previously did not have access to the Protected Material; provided, however,
20 that each such witness given access to Protected Material shall be advised that such
21 Materials are being Disclosed pursuant to, and are subject to, the terms of this Order
22 and that they may not be Disclosed other than pursuant to its terms;
- 23 g. Experts, consultants and their Support Staff for purposes
24 reasonably related to the scope of the Expert's work in this Action, provided they
25 have signed a non-disclosure agreement in the form attached as Exhibit A;
- 26 h. Vendors retained by or for the Parties to assist in preparing for
27 pretrial discovery, trial, or hearings, provided they have signed a non-disclosure
28 agreement in the form attached as Exhibit A;

1 i. Private arbitrators and mediators involved in resolving disputes
2 over claims in the Action, provided they have signed a non-disclosure agreement in
3 the form attached as Exhibit A;

4 34. **“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**

5 **Material:** Unless otherwise ordered by the Court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose material marked “HIGHLY
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and any summaries, extracts,
8 charts or notes made therefrom, and any facts or information contained therein or
9 derived therefrom, only to the following:

10 a. Outside Counsel for the Parties and their Support Staff;

11 b. Experts, consultants and their Support Staff for purposes
12 reasonably related to the scope of the Expert’s work in this Action, provided they
13 have signed a non-disclosure agreement in the form attached as Exhibit A;

14 c. The Court;

15 d. Court reporters in this Action (whether at depositions, hearings,
16 or any other proceeding);

17 e. Vendors retained by or for the Parties to assist in preparing for
18 pretrial discovery, trial, or hearings, provided they have signed a non-disclosure
19 agreement in the form attached as Exhibit A;

20 f. Any person who is indicated, on the face of the Document, to be
21 an author or recipient of the Confidential Materials, or who otherwise possessed or
22 knew the information; and

23 g. Private arbitrators and mediators involved in resolving disputes
24 over claim in the Action, provided they have signed a non-disclosure agreement in
25 the form attached as Exhibit A.

26 35. Each Person to whom Protected Material is Disclosed, except the Court
27 and counsel of record in this Action, shall agree to be bound by this Order before
28 receiving any Protected Material.

1 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 36. A party is not obligated to challenge the propriety of a confidentiality
3 designation at the time it is made. Unless a prompt challenge to a Designating Party’s
4 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
5 unnecessary economic burdens, or a significant disruption or delay of the litigation,
6 a Party does not waive its right to challenge a confidentiality designation by electing
7 not to mount a challenge promptly after the original designation is disclosed.

8 37. If Counsel for a Receiving Party objects to a Confidentiality Designation
9 by a Designating Party in whole or in part, the following procedure shall apply:

10 a. Counsel for the Challenging Party shall serve on the Designating
11 Party a written objection to such Confidentiality Designation, which shall describe
12 with particularity the Documents or information in question and shall state the
13 grounds for objection. To avoid ambiguity as to whether a challenge has been made,
14 the written notice must recite that the challenge to the Confidentiality Designation is
15 being made in accordance with this specific paragraph of the Order. The written
16 notice of objection to the Confidentiality Designation may be served via email
17 addressed to all counsel of record for the Designating Party.

18 b. Counsel for the Challenging Party and the Designating Party shall
19 confer in good faith in an effort to resolve the dispute. Counsel for the Challenging
20 Party and the Designating Party must begin the process by conferring directly (in
21 voice-to-voice dialogue; other forms of communication are not sufficient) within
22 fourteen (14) days of service of the written notice, unless otherwise agreed.

23 c. If the Parties cannot resolve a challenge without court
24 intervention, the Designating Party shall file and serve a motion to retain
25 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
26 79-5, if applicable) within 30 days of the initial notice of challenge (unless the Parties
27 agree to extend that time period to continue engaging in the meet and confer process).
28 Each such motion must be accompanied by a competent declaration affirming that

1 the movant has complied with the meet and confer requirements imposed in the
2 preceding paragraph. Failure by the Designating Party to make such a motion
3 including the required declaration within 30 days (or within the agreed upon
4 timeframe) shall automatically waive the confidentiality designation for each
5 challenged designation.

6 d. In addition, the Challenging Party may, but is not required to, file
7 a motion challenging a confidentiality designation at any time if there is good cause
8 for doing so, including a challenge to the designation of a deposition transcript or any
9 portions thereof. Any motion brought pursuant to this provision must be
10 accompanied by a competent declaration affirming that the movant has complied
11 with the meet and confer requirements imposed by Paragraph 11(b).

12 e. The burden of persuasion in any such challenge proceeding shall
13 be on the Designating Party. Frivolous challenges and those made for an improper
14 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties)
15 may expose the Challenging Party to sanctions. Unless the Designating Party has
16 waived the confidentiality designation by failing to file a motion to retain
17 confidentiality as described above, all parties shall continue to afford the material in
18 question the level of protection to which it is entitled under the Producing Party's
19 designation until the court rules on the challenge.

20 **VII. FILING PROTECTED MATERIAL**

21 38. Without written permission from the Designating Party or a court order
22 secured after appropriate notice to all interested persons, a Party may not file in the
23 public record in this action any Protected Material. A Party that seeks to file under
24 seal any Protected Material must comply with Civil Local Rule 79-5. Protected
25 Material may only be filed under seal pursuant to a court order authorizing the sealing
26 of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a
27 sealing order will issue only upon a request establishing that the Protected Material
28 at issue is privileged, protectable as a trade secret, or otherwise entitled to protection

1 under the law. If a Receiving Party's request to file Protected Material under seal
2 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party
3 may file the information in the public record pursuant to Civil Local Rule 79-5(e)
4 unless otherwise instructed by the court.

5 **VIII. USE OF PROTECTED MATERIAL IN HEARINGS**

6 39. If Counsel plans to introduce into evidence at any pre-trial hearing any
7 Document or transcript containing material with a Confidentiality Designation
8 produced by another Party or by a Non-Party, they shall provide advance notice to
9 the Designating Party for purposes of allowing the Designating Party to seek an order
10 that the Document or transcript be granted in camera treatment. If the Designating
11 Party wishes in camera treatment for the Document or transcript, the Designating
12 Party shall file an appropriate motion with the Court within four (4) business days
13 after it receives such notice. Except where such an order is granted, all Documents
14 and transcripts shall be part of the public record. Where in camera treatment is
15 granted, a duplicate copy of such Document or transcript with the Confidential
16 Material deleted therefrom may be placed on the public record.

17 40. The terms of this Order shall only apply to pre-trial proceedings in this
18 Action and do not preclude, limit, restrict or otherwise apply to the use of Documents
19 at trial. The Parties agree to confer in good faith on a protective order to govern
20 during the trial of this Action; however, this Order shall remain in effect until an
21 order to govern trial proceedings is entered.

22 **IX. INADVERTENT DISCLOSURES OR FAILURES TO DESIGNATE**

23 41. To the extent consistent with applicable law, the inadvertent or
24 unintentional disclosure of Protected Material that should have been designated as
25 such, regardless of whether the information, Document, or thing was so designated
26 at the time of disclosure, shall not be deemed a waiver in whole or in part of a Party's
27 claim of confidentiality, either as to the specific information, Document, or thing
28

1 Disclosed, or as to any material or information concerning the same or related subject
2 matter.

3 42. Such inadvertent or unintentional disclosure may be rectified by
4 notifying in writing Counsel for all Parties to whom the material was Disclosed that
5 the material should have had a Confidentiality Designation within twenty (20) days
6 of discovery of the disclosure. Such notice shall constitute a Confidentiality
7 Designation of the information, Document, or thing under this Order. No Party shall
8 be found to have violated this Order for failing to maintain the confidentiality of
9 material during a time when that material has not been properly designated. Upon
10 timely correction of a designation, the Receiving Party must make reasonable efforts
11 to assure that the material is treated in accordance with the provisions of this Order.

12 43. In accordance with Federal Rule of Evidence 502, no production made
13 pursuant to this Order shall result in a waiver of the attorney-client privilege or work-
14 product privilege (“privileged material”). This Order is without prejudice to a Party’s
15 right to assert the attorney-client, attorney work-product protection, or any other
16 privilege or objection. If any privileged material is inadvertently produced in this
17 matter, the Producing Party may claim it back by requesting return in writing, stating
18 that the production was inadvertent. Within five (5) business days upon receipt of
19 such written notice, the Receiving Party shall confirm in writing that it has either (1)
20 returned the items identified and destroyed any copies which were made or (2)
21 immediately sequestered the material in question and provided the Party making the
22 claim of inadvertent disclosure notice that the Receiving Party intends to challenge
23 the material as not privileged or not inadvertently produced. This paragraph does not
24 restrict the right of the Receiving Party to challenge the Producing Party’s claim of
25 privilege.

26 44. If a Receiving Party learns that, by inadvertence or otherwise, it has
27 Disclosed Protected Material to any Person or in any circumstance not authorized
28 under this Order, the Receiving Party must immediately (a) notify the Designating

1 Party in writing of the unauthorized disclosures; (b) use its best efforts to retrieve all
2 unauthorized copies of the Protected Material; (c) inform the Person(s) to whom
3 unauthorized disclosures were made of the terms of this Order; (d) request such
4 Person(s) to execute a non-disclosure agreement in the form attached as Exhibit A.

5 **X. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
6 **PRODUCED**

7 45. Other than in this Action, if any person subject to this Order who has
8 custody of any Protected Material is served with a discovery request, subpoena or
9 court order, or receives some other form of legal process or request from any court,
10 federal or state regulatory or administrative body or agency, legislative body, self-
11 regulatory organization or other person or entity purporting to have authority to
12 require the production thereof (“Discovery Request”), that compels disclosures of
13 any information or items designated in this action as “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that person must:

15 a. Notify the Designating Party in writing within three (3) business
16 days of receipt of the Discovery Request. Such notifications shall include a copy of
17 the Discovery Request;

18 b. Promptly notify the proponent of the Discovery Request that
19 some or all of the material covered by the Discovery Request is subject to this Order
20 in writing prior to producing any documents covered by this Order. Such notification
21 shall include a copy of this Order; and

22 c. Cooperate with respect to all reasonable procedures sought to be
23 pursued by the Designating Party whose Protected Material may be affected.

24 46. Upon receipt of this notice, the Designating Party may, in its sole
25 discretion and at its own cost, move to quash or limit the Discovery Request,
26 otherwise oppose production of the Protected Material, and/or seek to obtain
27 confidential treatment of such Protected Material from the proponent of the
28 Discovery Request to the fullest extent available under law.

1 47. If the Designating Party does not object or seek a protective order from
2 the court within 14 days of receiving the Discovery Request, the Receiving Party
3 may produce the Protected Material responsive to the Discovery Request. If the
4 Designating Party timely seeks a protective order or objects, the person served with
5 Discovery Request shall not produce any Protected Material before a determination
6 by the court adjudicating the Designating Party's motion, unless the person has
7 obtaining the Designing Party's permission in writing. Nothing in these provisions
8 should be construed as authorizing or encouraging a Receiving Party in this action to
9 disobey a lawful directive from another court.

10 **XI. ADDITION OF PARTIES AND APPLICABILITY TO NON-PARTIES**

11 48. Any Party to the Proceeding who has not executed this Stipulation and
12 Protective Order as of the time it is presented to the Court for signature may thereafter
13 become a party to this Stipulation and Protective Order by its counsel's signing and
14 dating a copy thereof and filing the same with the Court, and serving copies of such
15 signed and dated copy upon the other Parties to this Stipulation and Protective Order.

16 49. The terms of this Order are applicable to Protected Material produced
17 by a Non-Party in this Action. Such information produced by Non-Parties in
18 connection with this litigation is protected by the remedies and relief provided by this
19 Order.

20 50. Any designation of information as Protected Material by a Non-Party
21 shall also function as a consent by such Producing Party to the authority of the Court
22 in the Action to resolve and conclusively determine any motion or other application
23 made by any person or Party with respect to such designation, or any other matter
24 otherwise arising under this Stipulation and Protective Order.

25 **XII. MISCELLANEOUS**

26 51. The entry of this Order does not alter, waive, modify, or abridge any
27 right, privilege or protection otherwise available to any Party or Non-Party with
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1 respect to the Discovery Materials, including but not limited to, any right to assert
2 the attorney-client privilege, the attorney work product doctrine, or other privilege.

3 52. This Stipulation and Protective Order is entered without prejudice to the
4 right of any Party to apply to the Court at any time for additional protection, or to
5 release, rescind, or modify the restrictions of this Stipulation and Protective Order,
6 to determine whether a particular person shall be entitled to receive any Protected
7 Material or to seek relief from inadvertent disclosure of privileged or work product
8 information.

9 53. The Court may modify the terms and conditions of this Order for good
10 cause, or in the interest of justice, or on its own order at any time in these proceedings.

11 54. Neither this Order nor the Disclosure of Protected Materials shall be
12 deemed a concession or determination of the relevance, materiality, or admissibility
13 of Protected Material governed by or Disclosed under this Order.

14 55. The Parties to the Proceeding agree that the terms and conditions of this
15 Agreement are the result of negotiations between their counsel, and that this
16 Agreement shall not be construed in favor of or against any Party by reason of the
17 extent to which its counsel participated in the drafting of this Agreement.

18 **XIII. DURATION AND FINAL DISPOSITION**

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

27 57. To the extent permitted by law, the Court shall retain jurisdiction to
28 enforce, modify, or reconsider this Order, even after the Proceeding is terminated.

1 58. Within 60 days after the final disposition of this action, each Receiving
2 Party must use reasonable efforts to either return or destroy Protected Materials,
3 except that Counsel may retain for archival purposes complete copies of all court
4 papers (and exhibits thereto), correspondence, pleadings, deposition and trial
5 transcripts (and exhibits thereto), legal memoranda, Expert reports and attorney work
6 product that contain or refer to Protected Materials, provided that any such archival
7 copies that contain or constitute Protected Material shall remain subject to this
8 Protective Order. Nothing shall be interpreted in a manner that would violate any
9 applicable canons of ethics or codes of professional responsibility.

10 59. The Receiving Party's reasonable efforts shall not require the return or
11 destruction of Protected Materials from: (1) disaster recovery or business continuity
12 backups, (2) data stored in system-generated temporary folders or near-line storage,
13 (3) unstructured departed employee data, and/or (4) material that is subject to legal
14 hold or retention obligations or commingled with other such material. Backup
15 storage media will not be restored for purposes of returning or certifying destruction
16 of Protected Materials. Provided, however, that such retained information shall
17 continue to be treated in accordance with this Order.

18 60. The Receiving Party must submit a written certification to the Producing
19 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
20 deadline of compliance with the final disposition procedures in this Order.

21 **XIV. BINDING EFFECT, ENTRY OF ORDER, AND EXECUTION**

22 61. After this Stipulation and Protective Order has been signed by counsel,
23 it shall be presented to the Court for entry. The Parties agree that this Stipulation and
24 Protective Order is binding upon them regardless of whether the Order is signed by
25 the Court.

26 62. The Parties and all signatories to the Certification attached hereto as
27 Exhibit A agree to be bound by this Stipulation and Protective Order pending its
28 approval and entry by the Court. In the event that the Court modifies this Stipulation

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

6 63. This Stipulation and Protective Order may be executed in counterparts.

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1 **IT IS SO STIPULATED.**

2 Dated: April 25, 2019

MANATT, PHELPS & PHILLIPS, LLP

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By:/s/ Kristin E. Haule

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Gregory N. Pimstone

Jeffrey J. Maurer

Kristin Haule

Attorneys for Defendant

CALIFORNIA PHYSICIANS'

SERVICE dba BLUE SHIELD OF

CALIFORNIA

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Dated: April 25, 2019

LYTTON & WILLIAMS, LLP

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By:/s/ Mina Hakakian

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Richard Williams

Mina Hakakian

Attorneys for Plaintiff

BEVERLY OAKS PHYSICIANS

SURGICAL CENTER, LLC

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SIGNATURE ATTESTATION

I attest that all other signatories listed and on whose behalf the filing is submitted concur in the filing's content and have authorized the filing.

Dated: April 25, 2019

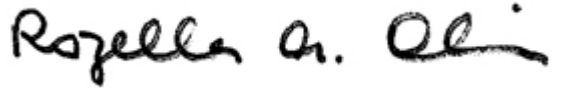
MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Kristin E. Haule

Gregory N. Pimstone
Jeffrey J. Maurer
Kristin Haule
Attorneys for Defendant
CALIFORNIA PHYSICIANS'
SERVICE dba BLUE SHIELD OF
CALIFORNIA

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 26, 2019

By: 

Honorable Rozella A. Oliver
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [PRINT OR TYPE FULL
4 NAME], of _____

5 _____
6 [PRINT OR TYPE FULL ADDRESS], declare under penalty of perjury under the
7 laws of the United States of America that I have read in its entirety and understand
8 the Stipulated Protective Order that was issued by the United States District Court
9 for the Central District of California, Western Division in the case *Beverly Oaks*
10 *Physicians Surgical Center, LLC v. California Physicians Services dba Blue Shield*
11 *of California*, Case No. 2:18-cv-06407-RGK-RAO.

12 I agree to comply with and to be bound by all the terms of the Stipulated
13 Protective Order, and I understand and acknowledge that failure to so comply could
14 expose me to sanctions and punishment in the nature of contempt. I solemnly
15 promise that I will not Disclose in any manner any information or item that is subject
16 to the Stipulated Protective Order to any person or entity except in strict compliance
17 with the provisions of this Order.

18 I further agree to submit to the jurisdiction of the United States District Court
19 for the Central District of California for the purpose of enforcing the terms of this
20 Stipulated Protective Order, even if such enforcement proceedings occur after
21 termination of this Action.

22 Date:

Printed Name:

23 _____
24 _____

25 City and State where sworn and
26 signed:

Signature:

27 _____
28 _____

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