

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BERYL WEINER, an individual;
ROXBURY HEALTHCARE
SERVICES, LLC, a California limited
liability company; and S&W HEALTH
MANAGEMENT SERVICES, INC., a
California corporation,

Plaintiffs/Counter-Defendants,

v.

SCOTTSDALE INSURANCE
COMPANY, an Ohio corporation,

Defendant/Counter-
Claimant/Third-Party Plaintiff,

v.

SOUTH BAY HOSPITAL
MANAGEMENT COMPANY, LLC, a
California limited liability company,

Third-Party Defendant/Counter
Claimant.

Case No. 2:19-cv-10664-JWH-E

Matter Assigned to Honorable Judge John
W. Holcomb

Magistrate Judge Charles F. Eick

~~[PROPOSED]~~ PROTECTIVE ORDER
GOVERNING CONFIDENTIAL
INFORMATION

1. GUIDING PRINCIPLES

1.1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential,
proprietary or private information for which special protection from public disclosure

1 and from use for any purpose other than prosecuting this litigation may be warranted.
2 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
3 Stipulated Protective Order. The parties acknowledge that this Order does not confer
4 blanket protections on all disclosures or responses to discovery and that the protection
5 it affords from public disclosure and use extends only to the limited information or
6 items that are entitled to confidential treatment under the applicable legal principles.

7 **1.2. GOOD CAUSE STATEMENT**

8 SCOTTSDALE INSURANCE COMPANY (“Scottsdale”) has propounded
9 discovery on BERYL WEINER, an individual; ROXBURY HEALTHCARE
10 SERVICES, LLC, a California limited liability company; and S&W HEALTH
11 MANAGEMENT SERVICES, INC., and SOUTH BAY HOSPITAL
12 MANAGEMENT COMPANY, LLC (collectively, the “Insureds”) regarding the
13 insurance coverage issues in this litigation. The Insureds believe that disclosure of
14 non-public confidential information relating to several pending lawsuits, including *In*
15 *re Gardens Regional Hospital and Medical Center, Inc.*, Case No. 2:16-bk-17463-ER
16 (C.D. Cal.); *State of California ex. rel. Mark Sersansie, et al. v. Gardens Regional*
17 *Hospital Medical Center, Inc., et al.*, Los Angeles Superior Court, Case No.
18 BC534466; and *Serrano Management Group, et al. v. South Bay Hospital Management*
19 *Co., LLC, et al.*, Los Angeles Superior Court, Case No. BC479025 (the “Underlying
20 Actions”), particularly settlement agreements and protective orders entered into
21 therein, warrant special protection from public disclosure and from use for any purpose
22 other than prosecution of this action. Such confidential and proprietary materials and
23 information consist of, among other things, confidential business or financial
24 information, and information regarding confidential business practices, or which may
25 be privileged or otherwise protected from disclosure under state or federal statutes,
26 court rules, case decisions, or common law. Further, the courts approved a protective
27 order governing the production and exchange of confidential and highly confidential
28 information in the Underlying Actions.

1 The Insureds have propounded discovery on Scottsdale regarding the
2 investigation of claims and coverage decisions regarding the insurance policies at issue
3 in this coverage action (the “Policies”). Scottsdale believes that documents and
4 information relating to the insurance coverage issues are likely to contain Scottsdale’s
5 confidential business practices.

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

16 **1.3. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
17 **SEAL**

18 The parties further acknowledge, as set forth in Section 12.3, below, that this
19 Stipulated Protective Order does not entitle them to file confidential information under
20 seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the
21 standards that will be applied when a party seeks permission from the court to file
22 material under seal.

23 There is a strong presumption that the public has a right of access to judicial
24 proceedings and records in civil cases. In connection with non-dispositive motions,
25 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
26 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
27 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electronics, Inc.*,
28 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good

1 cause showing), and a specific showing of good cause or compelling reasons with
2 proper evidentiary support and legal justification, must be made with respect to
3 Protected Material that a party seeks to file under seal. The parties' mere designation
4 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
5 submission of competent evidence by declaration, establishing that the material sought
6 to be filed under seal qualifies as confidential, privileged, or otherwise protectable—
7 constitute good cause.

8 Further, if a party requests sealing related to a dispositive motion or trial, then
9 compelling reasons, not only good cause, for the sealing must be shown, and the relief
10 sought shall be narrowly tailored to serve the specific interest to be protected. *See*
11 *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item
12 or type of information, document, or thing sought to be filed or introduced under seal
13 in connection with a dispositive motion or trial, the party seeking protection must
14 articulate compelling reasons, supported by specific facts and legal justification, for
15 the requested sealing order. Again, competent evidence supporting the application to
16 file documents under seal must be provided by declaration.

17 Any document that is not confidential, privileged, or otherwise protectable in its
18 entirety will not be filed under seal if the confidential portions can be redacted. If
19 documents can be redacted, then a redacted version for public viewing, omitting only
20 the confidential, privileged, or otherwise protectable portions of the document, shall
21 be filed. Any application that seeks to file documents under seal in their entirety should
22 include an explanation of why redaction is not feasible.

23 **2. DEFINITIONS**

24 **2.1. ACTION**

25 The above-captioned action pending in the United States District Court for the
26 Central District of California and styled as *Beryl Weiner, et al. v. Scottsdale Insurance*
27 *Company, et al.*, Case No. 2:19-cv-10664-JWH-E.

28 **2.2. CHALLENGING PARTY**

1 A Party or Non-Party that challenges the designation of information or items
2 under this Order.

3 **2.3. “CONFIDENTIAL” INFORMATION OR ITEMS**

4 Information (regardless of how it is generated, stored or maintained) or tangible
5 things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as
6 specified above in the Good Cause Statement.

7 **2.4. COUNSEL**

8 Outside Counsel of Record and House Counsel (as well as their support staff).

9 **2.5. DESIGNATING PARTY**

10 A Party or Non-Party that designates information or items that it produces in
11 disclosures or in responses to discovery as “CONFIDENTIAL.”

12 **2.6. DISCLOSURE OR DISCOVERY MATERIAL**

13 All items or information, regardless of the medium or manner in which it is
14 generated, stored, or maintained (including, among other things, testimony, transcripts,
15 and tangible things), that are produced or generated in disclosures or responses to
16 discovery in this matter.

17 **2.7. EXPERT**

18 A person with specialized knowledge or experience in a matter pertinent to the
19 litigation who has been retained by a Party or its counsel to serve as an expert witness
20 or as a consultant in this Action.

21 **2.8. HOUSE COUNSEL**

22 Attorneys who are employees of a party to this Action. House Counsel does not
23 include Outside Counsel of Record or any other outside counsel.

24 **2.9. NON-PARTY**

25 Any natural person, partnership, corporation, association or other legal entity not
26 named as a Party to this action.

27 **2.10. OUTSIDE COUNSEL OF RECORD**

28 Attorneys who are not employees of a party to this Action but are retained to

1 represent or advise a party to this Action and have appeared in this Action on behalf of
2 that party or are affiliated with a law firm that has appeared on behalf of that party, and
3 includes support staff.

4 **2.11. PARTY**

5 Any party to this Action, including all of its officers, directors, employees,
6 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

7 **2.12. PRODUCING PARTY**

8 A Party or Non-Party that produces Disclosure or Discovery Material in this
9 Action.

10 **2.13. PROFESSIONAL VENDORS**

11 Persons or entities that provide litigation support services (e.g., photocopying,
12 videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
13 or retrieving data in any form or medium) and their employees and subcontractors.

14 **2.14. PROTECTED MATERIAL**

15 Any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

16 **2.15. RECEIVING PARTY**

17 A Party that receives Disclosure or Discovery Material from a Producing Party.

18 **3. SCOPE**

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

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

26 **4. DURATION**

27 Once a case proceeds to trial, information that was designated as
28 CONFIDENTIAL or maintained pursuant to this protective order used or introduced

1 as an exhibit at trial becomes public and will be presumptively available to all
2 members of the public, including the press, unless compelling reasons supported by
3 specific factual findings to proceed otherwise are made to the trial judge in advance
4 of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
5 showing for sealing documents produced in discovery from “compelling reasons”
6 standard when merits-related documents are part of court record). Accordingly, with
7 respect to Confidential Material introduced at trial, the terms of this protective order
8 do not extend beyond the commencement of the trial.

9 **5. DESIGNATING PROTECTED MATERIAL**

10 **5.1. EXERCISE OF RESTRAINT AND CARE IN DESIGNATING**
11 **MATERIAL FOR PROTECTION.**

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

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

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

27 **5.2. MANNER AND TIMING OF DESIGNATIONS.**
28

1 Except as otherwise provided in this Order, or as otherwise stipulated or ordered,
2 Disclosure or Discovery Material that qualifies for protection under this Order must be
3 clearly so designated before the material is disclosed or produced. Designation in
4 conformity with this Order requires:

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

12 (b) for testimony given in depositions, either that the Designating Party
13 identifies the Disclosure or Discovery Material on the record, before the close of the
14 deposition all protected testimony, or within ten (10) business days of receipt of the
15 deposition transcript, whichever is later. During the first ten (10) business days after
16 receipt of the deposition transcript, the deposition transcript shall be deemed
17 “CONFIDENTIAL.”

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

24 **5.3. INADVERTENT FAILURES TO DESIGNATE.**

25 If timely corrected, an inadvertent failure to designate qualified information or
26 items does not, standing alone, waive the Designating Party’s right to secure protection
27 under this Order for such material. Upon timely correction of a designation, the
28 Receiving Party must make reasonable efforts to assure that the material is treated in

1 accordance with the provisions of this Order.

2 **6. CHALLENGING DESIGNATIONS**

3 **6.1. TIMING OF CHALLENGES.**

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

6 **6.2. MEET AND CONFER.**

7 The Challenging Party shall initiate the dispute resolution process under Local
8 Rule 37.1 et seq.

9 **6.3. BURDEN.**

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

17 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

18 **7.1. BASIC PRINCIPLES.**

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

25 **7.2. STORAGE.**

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

1 **7.3. DISCLOSURE OF “CONFIDENTIAL” INFORMATION OR**
2 **ITEMS.**

3 Unless otherwise ordered by the court or permitted in writing by the Designating
4 Party, a Receiving Party may disclose any information or item designated
5 “CONFIDENTIAL” only to:

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

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

11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this Action and who have agreed to be bound by
13 this Order;

14 (d) the court and its personnel;

15 (e) court reporters and their staff;

16 (f) professional jury or trial consultants, mock jurors, and Professional
17 Vendors to whom disclosure is reasonably necessary for this Action and who have
18 agreed to be bound by this Order;

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

21 (h) during their depositions, witnesses, and attorneys for witnesses, in the
22 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
23 requests that the witness agree to be bound by this Order; and (2) they will not be
24 permitted to keep any confidential information unless they agree to be bound by this
25 Order, unless otherwise agreed by the Designating Party or ordered by the court. Pages
26 of transcribed deposition testimony or exhibits to depositions that reveal Protected
27 Material may be separately bound by the court reporter and may not be disclosed to
28 anyone except as permitted under this Stipulated Protective Order;

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

3 (j) the Receiving Party's auditors, insurers, reinsurers, insurance
4 representatives, and regulators of the Parties to whom disclosure is reasonably
5 necessary for this Action; and

6 (k) any other person as to whom the Producing Party agrees in writing.

7 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
8 **PRODUCED IN OTHER LITIGATION**

9 **8.1. NOTIFICATION.**

10 If a Party is served with a subpoena or a court order issued in other litigation that
11 compels disclosure of any information or items designated in this Action as
12 "CONFIDENTIAL," that Party must:

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

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

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

21 **8.2. DELAYING PRODUCTION.**

22 If the Designating Party timely seeks a protective order, the Party served with
23 the subpoena or court order shall not produce any information designated in this action
24 as "CONFIDENTIAL" before a determination by the court from which the subpoena
25 or order issued, unless the Party has obtained the Designating Party's permission. The
26 Designating Party shall bear the burden and expense of seeking protection in that court
27 of its Protected Material and nothing in these provisions should be construed as
28 authorizing or encouraging a Receiving Party in this Action to disobey a lawful

1 directive from another court.

2 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
3 **PRODUCED IN THIS LITIGATION**

4 **9.1. APPLICATION.**

5 The terms of this Order are applicable to information produced by a Non-
6 Party in this Action and designated as "CONFIDENTIAL." Such information
7 produced by Non-Parties in connection with this litigation is protected by the remedies
8 and relief provided by this Order. Nothing in these provisions should be construed as
9 prohibiting a Non-Party from seeking additional protections.

10 **9.2. NOTICE.**

11 In the event that a Party is required, by a valid discovery request, to produce
12 a Non-Party's confidential information in its possession, and the Party is subject to an
13 agreement with the Non-Party not to produce the Non-Party's confidential information,
14 then the Party shall:

15 (a) promptly notify in writing the Requesting Party and the Non-Party that
16 some or all of the information requested is subject to a confidentiality agreement with
17 a Non-Party;

18 (b) promptly provide the Non-Party with a copy of the Stipulated Protective
19 Order in this Action, the relevant discovery request(s), and a reasonably specific
20 description of the information requested; and

21 (c) make the information requested available for inspection by the Non-
22 Party, if requested.

23 **9.3. PRODUCTION.**

24 If the Non-Party fails to seek a protective order from this court within 14 days
25 of receiving the notice and accompanying information, the Receiving Party may
26 produce the Non-Party's confidential information responsive to the discovery request.
27 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
28 any information in its possession or control that is subject to the confidentiality

1 agreement with the Non-Party before a determination by the court. Absent a court
2 order to the contrary, the Non-Party shall bear the burden and expense of seeking
3 protection in this court of its Protected Material.

4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
6 Protected Material to any person or in any circumstance not authorized under this
7 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
8 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
9 all unauthorized copies of the Protected Material, (c) inform the person or persons to
10 whom unauthorized disclosures were made of all the terms of this Order, and (d)
11 request such person or persons to agree to be bound by this Order.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
13 **PROTECTED MATERIAL**

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

24 **12. MISCELLANEOUS**

25 **12.1. RIGHT TO FURTHER RELIEF.**

26 Nothing in this Order abridges the right of any person to seek its modification
27 by the Court in the future.

28 **12.2. RIGHT TO ASSERT OTHER OBJECTIONS.**

1 By stipulating to the entry of this Protective Order, no Party waives any right it
2 otherwise would have to object to disclosing or producing any information or item on
3 any ground not addressed in this Stipulated Protective Order. Similarly, no Party
4 waives any right to object on any ground to use in evidence of any of the material
5 covered by this Protective Order.

6 **12.3. FILING PROTECTED MATERIAL.**

7 A Party that seeks to file under seal any Protected Material must comply with
8 Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant to a
9 court order authorizing the sealing of the specific Protected Material at issue. If a
10 Party's request to file Protected Material under seal is denied by the court, then the
11 Receiving Party may file the information in the public record unless otherwise
12 instructed by the court.

13 **13. FINAL DISPOSITION**

14 This Order, insofar as it restricts the communication and use of Confidential
15 Material, shall continue to be binding throughout and after the conclusion of this
16 litigation, including any appeals. The obligations of the Parties under this Order shall
17 survive the resolution of this action such that the Parties agree to maintain all
18 Confidential Material as "CONFIDENTIAL" during the pendency of and after the
19 conclusion of this action.

20 **14. VIOLATION**

21 Any violation of this Order may be punished by appropriate measures including,
22 without limitation, contempt proceedings and/or monetary sanctions.

23
24 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

25
26 DATED: 2/16/21

27 /S/ CHARLES F. EICK
28 CHARLES F. EICK
United States Magistrate Judge

1
2 **EXHIBIT A**

3 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

4 I, _____ [print or type full name], of
5 _____ [print or type full address],
6 declare under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for the
8 Central District of California on _____ [date] in the case
9 of *Beryl Weiner, et al. vs. Scottsdale Insurance Company, et al.*, No. 2:19-cv-10664-
10 JWH-E. I agree to comply with and to be bound by all the terms of this Stipulated
11 Protective Order and I understand and acknowledge that failure to so comply could
12 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
13 that I will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with the
15 provisions of the Order.

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

20 I hereby appoint _____ [print or type full name] of
21 _____ [print or type
22 full address and telephone number] as my California agent for service of process in
23 connection with this action or any proceedings related to enforcement of this Stipulated
24 Protective Order.

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____