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18 SELECT REHABILITATION, LLC

19 **UNITED STATES DISTRICT COURT**
 20 **CENTRAL DISTRICT OF CALIFORNIA**

21 NIKOLAY NISIMOV, an individual,
 22
 23 Plaintiff,
 24
 25 vs.
 26 SELECT REHABILITATION, LLC, a
 27 Delaware Corporation; and DOES 1
 28 through 10, inclusive,
 Defendant.

Case No. 2:21-cv-02490-SB-MAAx
STIPULATED PROTECTIVE ORDER

 Judge: Stanley Blumenfeld, Jr.
 Ctrm: 6C

 Complaint Filed: February 16, 2021

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1 Plaintiff Nikolay Nisimov (“Plaintiff”) and Defendant Select Rehabilitation, LLC
2 (“Select”) (collectively, the “Parties), by and through their respective counsel of record,
3 hereby stipulate as follows:
4

5 **1. PURPOSES AND LIMITATIONS**

6 Discovery in this action is likely to involve production of confidential, proprietary,
7 or private information for which special protection from public disclosure and from use
8 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
9 parties hereby stipulate to and petition the Court to enter the following Stipulated
10 Protective Order. The parties acknowledge that this Stipulated Protective Order does not
11 confer blanket protections on all disclosures or responses to discovery and that the
12 protection it affords from public disclosure and use extends only to the limited
13 information or items that are entitled to confidential treatment under the applicable legal
14 principles. The parties further acknowledge, as set forth in Section 13.3 below, that this
15 Stipulated Protective Order does not entitle them to file confidential information under
16 seal; Local Rule 79-5 sets forth the procedures that must be followed and the standards
17 that will be applied when a party seeks permission from the Court to file material under
18 seal. Discovery in this action is likely to involve production of confidential, proprietary,
19 or private information for which special protection from public disclosure and from use
20 for any purpose other than prosecuting this litigation may be warranted.
21

22 **2. GOOD CAUSE STATEMENT**

23 Plaintiff’s action involves his own personal medical condition, and Select is a
24 provider of healthcare services. This action is likely to involve the discovery of highly
25 private and confidential medical information and records, including Plaintiff’s medical
26 records and those of Select’s patients, for which special protection from public disclosure
27 and from use for any purpose other than prosecution of this action is warranted. Such
28 confidential and proprietary materials and information consist of, among other things,

1 confidential business or financial information, information regarding confidential
2 business practices, or other confidential information (including information implicating
3 privacy rights of third parties), information otherwise generally unavailable to the public,
4 or which may be privileged or otherwise protected from disclosure under state or federal
5 statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow
6 of information, to facilitate the prompt resolution of disputes over confidentiality of
7 discovery materials, to adequately protect information the parties are entitled to keep
8 confidential, to ensure that the parties are permitted reasonable necessary uses of such
9 material in preparation for and in the conduct of trial, to address their handling at the end
10 of the litigation, and to serve the ends of justice, a protective order for such information is
11 justified in this matter. It is the intent of the parties that information will not be
12 designated as confidential for tactical reasons and that nothing be so designated without a
13 good faith belief that it has been maintained in a confidential, non-public manner, and
14 there is good cause why it should not be part of the public record of this case.

15
16 **3. DEFINITIONS**

- 17 3.1. Action: *Nikolay Nisimov v. Select Rehabilitation, LLC*, C.D. Cal. Case No.
18 2:21-cv-02490-SB-MAAx.
- 19 3.2. Challenging Party: A Party or Nonparty that challenges the designation of
20 information or items under this Stipulated Protective Order.
- 21 3.3. “CONFIDENTIAL” Information or Items: Information (regardless of how it
22 is generated, stored or maintained) or tangible things that qualify for
23 protection under Federal Rule of Civil Procedure 26(c), and as specified
24 above in the Good Cause Statement.
- 25 3.4. Counsel: Outside Counsel of Record and In-House Counsel (as well as their
26 support staff).
- 27 3.5. Designating Party: A Party or Nonparty that designates information or items
28 that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL.”

- 2 3.6. Disclosure or Discovery Material: All items or information, regardless of
3 the medium or manner in which it is generated, stored, or maintained
4 (including, among other things, testimony, transcripts, and tangible things),
5 that is produced or generated in disclosures or responses to discovery in this
6 matter.
- 7 3.7. Expert: A person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to
9 serve as an expert witness or as a consultant in this Action.
- 10 3.8. In-House Counsel: Attorneys who are employees of a party to this Action.
11 In-House Counsel does not include Outside Counsel of Record or any other
12 outside counsel.
- 13 3.9. Nonparty: Any natural person, partnership, corporation, association, or
14 other legal entity not named as a Party to this action.
- 15 3.10. Outside Counsel of Record: Attorneys who are not employees of a party to
16 this Action but are retained to represent or advise a party to this Action and
17 have appeared in this Action on behalf of that party or are affiliated with a
18 law firm which has appeared on behalf of that party, and includes support
19 staff.
- 20 3.11. Party: Any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, In-House Counsel, and Outside
22 Counsel of Record (and their support staffs).
- 23 3.12. Producing Party: A Party or Nonparty that produces Disclosure or
24 Discovery Material in this Action.
- 25 3.13. Professional Vendors: Persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or
28 medium) and their employees and subcontractors.

1 3.14. Protected Material: Any Disclosure or Discovery Material that is designated
2 as “CONFIDENTIAL.”

3 3.15. Receiving Party: A Party that receives Disclosure or Discovery Material
4 from a Producing Party.
5

6 **4. SCOPE**

7 The protections conferred by this Stipulated Protective Order cover not only
8 Protected Material, but also (1) any information copied or extracted from Protected
9 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
10 (3) any testimony, conversations, or presentations by Parties or their Counsel that might
11 reveal Protected Material.

12 Any use of Protected Material at trial shall be governed by the orders of the trial
13 judge. This Stipulated Protective Order does not govern the use of Protected Material at
14 trial.
15

16 **5. DURATION**

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

26 **6. DESIGNATING PROTECTED MATERIAL**

27 6.1. Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Nonparty that designates information or items for

1 protection under this Stipulated Protective Order must take care to limit any
2 such designation to specific material that qualifies under the appropriate
3 standards. The Designating Party must designate for protection only those
4 parts of material, documents, items, or oral or written communications that
5 qualify so that other portions of the material, documents, items, or
6 communications for which protection is not warranted are not swept
7 unjustifiably within the ambit of this Stipulated Protective Order.

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

13 6.2. Manner and Timing of Designations.

14 Except as otherwise provided in this Stipulated Protective Order (*see*,
15 *e.g.*, Section 6.2(a)), or as otherwise stipulated or ordered, Disclosure or
16 Discovery Material that qualifies for protection under this Stipulated
17 Protective Order must be clearly so designated before the material is
18 disclosed or produced.

19 Designation in conformity with this Stipulated Protective Order
20 requires the following:

- 21 (a) For information in documentary form (*e.g.*, paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or
23 trial proceedings), that the Producing Party affix at a minimum, the
24 legend “CONFIDENTIAL” to each page that contains protected
25 material. If only a portion or portions of the material on a page
26 qualifies for protection, the Producing Party also must clearly identify
27 the protected portion(s) (*e.g.*, by making appropriate markings in the
28 margins).

1 A Party or Nonparty that makes original documents available
2 for inspection need not designate them for protection until after the
3 inspecting Party has indicated which documents it would like copied
4 and produced. During the inspection and before the designation, all of
5 the material made available for inspection shall be deemed
6 “CONFIDENTIAL.” After the inspecting Party has identified the
7 documents it wants copied and produced, the Producing Party must
8 determine which documents, or portions thereof, qualify for protection
9 under this Stipulated Protective Order. Then, before producing the
10 specified documents, the Producing Party must affix the legend
11 “CONFIDENTIAL” to each page that contains Protected Material. If
12 only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the
14 protected portion(s) (e.g., by making appropriate markings in the
15 margins).

16 (b) For testimony given in depositions, that the Designating Party identify
17 the Disclosure or Discovery Material on the record, before the close of
18 the deposition, all protected testimony.

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

25 6.3. Inadvertent Failure to Designate.

26 If timely corrected, an inadvertent failure to designate qualified
27 information or items does not, standing alone, waive the Designating Party’s
28 right to secure protection under this Stipulated Protective Order for such

1 material. Upon timely correction of a designation, the Receiving Party must
2 make reasonable efforts to assure that the material is treated in accordance
3 with the provisions of this Stipulated Protective Order.
4

5 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 7.1. Timing of Challenges.

7 Any Party or Nonparty may challenge a designation of confidentiality
8 at any time that is consistent with the Court’s Scheduling Order.

9 7.2. Meet and Confer.

10 The Challenging Party shall initiate the dispute resolution process,
11 which shall comply with Local Rule 37.1 et seq., and with Section 4 of
12 Judge Audero’s Procedures (“Mandatory Telephonic Conference for
13 Discovery Disputes”).¹

14 7.3. Burden of Persuasion.

15 The burden of persuasion in any such challenge proceeding shall be
16 on the Designating Party. Frivolous challenges, and those made for an
17 improper purpose (e.g., to harass or impose unnecessary expenses and
18 burdens on other parties) may expose the Challenging Party to sanctions.
19 Unless the Designating Party has waived or withdrawn the confidentiality
20 designation, all parties shall continue to afford the material in question the
21 level of protection to which it is entitled under the Producing Party’s
22 designation until the Court rules on the challenge.
23

24 **8. ACCESS TO AND USE OF PROTECTED MATERIALS**

25 8.1. Basic Principles.

26 A Receiving Party may use Protected Material that is disclosed or
27

28 ¹ Judge Audero’s Procedures are available at <https://www.cacd.uscourts.gov/honorable-maria-audero>.

1 produced by another Party or by a Nonparty in connection with this Action
2 only for prosecuting, defending, or attempting to settle this Action. Such
3 Protected Material may be disclosed only to the categories of persons and
4 under the conditions described in this Stipulated Protective Order. When the
5 Action reaches a final disposition, a Receiving Party must comply with the
6 provisions of Section 14 below.

7 Protected Material must be stored and maintained by a Receiving
8 Party at a location and in a secure manner that ensures that access is limited
9 to the persons authorized under this Stipulated Protective Order.

10 8.2. Disclosure of “CONFIDENTIAL” Information or Items.

11 Unless otherwise ordered by the Court or permitted in writing by the
12 Designating Party, a Receiving Party may disclose any information or item
13 designated “CONFIDENTIAL” only to:

- 14 (a) The Receiving Party’s Outside Counsel of Record, as well as
15 employees of said Outside Counsel of Record to whom it is
16 reasonably necessary to disclose the information for this Action;
- 17 (b) The officers, directors, and employees (including In-House Counsel)
18 of the Receiving Party to whom disclosure is reasonably necessary for
19 this Action;
- 20 (c) Experts of the Receiving Party to whom disclosure is reasonably
21 necessary for this Action and who have signed the “Acknowledgment
22 and Agreement to Be Bound” (Exhibit A);
- 23 (d) The Court and its personnel;
- 24 (e) Court reporters and their staff;
- 25 (f) Professional jury or trial consultants, mock jurors, and Professional
26 Vendors to whom disclosure is reasonably necessary or this Action
27 and who have signed the “Acknowledgment and Agreement to be
28 Bound” (Exhibit A);

- 1 (g) The author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the
3 information;
- 4 (h) During their depositions, witnesses, and attorneys for witnesses, in the
5 Action to whom disclosure is reasonably necessary provided: (i) the
6 deposing party requests that the witness sign the “Acknowledgment
7 and Agreement to Be Bound” (Exhibit A); and (ii) the witness will not
8 be permitted to keep any confidential information unless they sign the
9 “Acknowledgment and Agreement to Be Bound,” unless otherwise
10 agreed by the Designating Party or ordered by the Court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal
12 Protected Material may be separately bound by the court reporter and
13 may not be disclosed to anyone except as permitted under this
14 Stipulated Protective Order; and
- 15 (i) Any mediator or settlement officer, and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement
17 discussions.
- 18

19 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
20 **OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation that
22 compels disclosure of any information or items designated in this Action as
23 “CONFIDENTIAL,” that Party must:

- 24 (a) Promptly notify in writing the Designating Party. Such notification shall
25 include a copy of the subpoena or court order;
- 26 (b) Promptly notify in writing the party who caused the subpoena or order to
27 issue in the other litigation that some or all of the material covered by the
28 subpoena or order is subject to this Stipulated Protective Order. Such

- 1 notification shall include a copy of this Stipulated Protective Order; and
2 (c) Cooperate with respect to all reasonable procedures sought to be pursued by
3 the Designating Party whose Protected Material may be affected.

4 If the Designating Party timely seeks a protective order, the Party served with the
5 subpoena or court order shall not produce any information designated in this action as
6 “CONFIDENTIAL” before a determination by the Court from which the subpoena or
7 order issued, unless the Party has obtained the Designating Party’s permission. The
8 Designating Party shall bear the burden and expense of seeking protection in that court of
9 its confidential material and nothing in these provisions should be construed as
10 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
11 from another court.

12
13 **10. A NONPARTY’S PROTECTED MATERIAL SOUGHT TO BE**
14 **PRODUCED IN THIS LITIGATION**

15 10.1. Application.

16 The terms of this Stipulated Protective Order are applicable to
17 information produced by a Nonparty in this Action and designated as
18 “CONFIDENTIAL.” Such information produced by Nonparties in
19 connection with this litigation is protected by the remedies and relief
20 provided by this Stipulated Protective Order. Nothing in these provisions
21 should be construed as prohibiting a Nonparty from seeking additional
22 protections.

23 10.2. Notification.

24 In the event that a Party is required, by a valid discovery request, to
25 produce a Nonparty’s confidential information in its possession, and the
26 Party is subject to an agreement with the Nonparty not to produce the
27 Nonparty’s confidential information, then the Party shall:

- 28 (a) Promptly notify in writing the Requesting Party and the Nonparty that

1 some or all of the information requested is subject to a confidentiality
2 agreement with a Nonparty;

3 (b) Promptly provide the Nonparty with a copy of the Stipulated
4 Protective Order in this Action, the relevant discovery request(s), and
5 a reasonably specific description of the information requested; and

6 (c) Make the information requested available for inspection by the
7 Nonparty, if requested.

8 10.3. Conditions of Production.

9 If the Nonparty fails to seek a protective order from this Court within
10 fourteen (14) days after receiving the notice and accompanying information,
11 the Receiving Party may produce the Nonparty's confidential information
12 responsive to the discovery request. If the Nonparty timely seeks a
13 protective order, the Receiving Party shall not produce any information in its
14 possession or control that is subject to the confidentiality agreement with the
15 Nonparty before a determination by the Court. Absent a court order to the
16 contrary, the Nonparty shall bear the burden and expense of seeking
17 protection in this Court of its Protected Material.
18

19 **11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
21 Protected Material to any person or in any circumstance not authorized under this
22 Stipulated Protective Order, the Receiving Party immediately must (1) notify in writing
23 the Designating Party of the unauthorized disclosures, (2) use its best efforts to retrieve
24 all unauthorized copies of the Protected Material, (3) inform the person or persons to
25 whom unauthorized disclosures were made of all the terms of this Stipulated Protective
26 Order, and (4) request such person or persons to execute the "Acknowledgment and
27 Agreement to be Bound" (Exhibit A).
28

1 **12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
2 **PROTECTED MATERIAL**

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of
5 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
6 This provision is not intended to modify whatever procedure may be established in an e-
7 discovery order that provides for production without prior privilege review. Pursuant to
8 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
9 effect of disclosure of a communication or information covered by the attorney-client
10 privilege or work product protection, the parties may incorporate their agreement in the
11 Stipulated Protective Order submitted to the Court.

12
13 **13. MISCELLANEOUS**

14 13.1. Right to Further Relief.

15 Nothing in this Stipulated Protective Order abridges the right of any
16 person to seek its modification by the Court in the future.

17 13.2. Right to Assert Other Objections.

18 By stipulating to the entry of this Stipulated Protective Order, no Party
19 waives any right it otherwise would have to object to disclosing or
20 producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object
22 on any ground to use in evidence of any of the material covered by this
23 Stipulated Protective Order.

24 13.3. Filing Protected Material.

25 A Party that seeks to file under seal any Protected Material must
26 comply with Local Rule 79-5. Protected Material may only be filed under
27 seal pursuant to a court order authorizing the sealing of the specific
28 Protected Material at issue. If a Party's request to file Protected Material

1 under seal is denied by the Court, then the Receiving Party may file the
2 information in the public record unless otherwise instructed by the Court.
3

4 **14. FINAL DISPOSITION**

5 After the final disposition of this Action, within sixty (60) days of a written request
6 by the Designating Party, each Receiving Party must return all Protected Material to the
7 Producing Party or destroy such material. As used in this subdivision, “all Protected
8 Material” includes all copies, abstracts, compilations, summaries, and any other format
9 reproducing or capturing any of the Protected Material. Whether the Protected Material
10 is returned or destroyed, the Receiving Party must submit a written certification to the
11 Producing Party (and, if not the same person or entity, to the Designating Party) by the
12 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
13 Material that was returned or destroyed and (2) affirms that the Receiving Party has not
14 retained any copies, abstracts, compilations, summaries or any other format reproducing
15 or capturing any of the Protected Material. Notwithstanding this provision, Counsel is
16 entitled to retain an archival copy of all pleadings; motion papers; trial, deposition, and
17 hearing transcripts; legal memoranda; correspondence; deposition and trial exhibits;
18 expert reports; attorney work product; and consultant and expert work product, even if
19 such materials contain Protected Material. Any such archival copies that contain or
20 constitute Protected Material remain subject to this Stipulated Protective Order as set
21 forth in Section 5.
22

23 **15. VIOLATION**

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

26 ///

27 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [full name], of _____
4 _____ [address], declare under penalty of perjury that I have read in its entirety
5 and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Central District of California on _____ [date] in the case
7 of _____ [case name and
8 number]. I agree to comply with and to be bound by all the terms of this Stipulated
9 Protective Order, and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
11 that I will not disclose in any manner any information or item that is subject to this
12 Stipulated Protective Order to any person or entity except in strict compliance with the
13 provisions of this Stipulated Protective Order.

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

21
22 Signature: _____
23 Printed Name: _____
24 Date: _____
25 City and State Where Sworn and Signed: _____