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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES CENTER FOR
ORAL & MAXILLOFACIAL SURGERY,
Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY,
ET AL.,
Defendants.

Case No.: LA CV 2:22-cv-00348-MEMF-JEM

**AGREED HIPAA-QUALIFIED
PROTECTIVE ORDER**

This Agreed HIPAA-Qualified Protective Order is entered into by and among: Plaintiff Los Angeles Center for Oral & Maxillofacial Surgery (Plaintiff), and Defendants Aetna Life Insurance Company and Aetna Health of California, Inc. (Defendants) (collectively, the Parties, and each a Party).

WHEREAS, the Parties to the captioned action (the Action) may engage in discovery, pre-trial, and trial proceedings, which include, among other things, taking depositions and producing documents; and

1 WHEREAS, those proceedings will necessarily involve the production of certain information
2 that the Parties to the Action believe to be confidential and sensitive commercial, financial or business
3 information and personal protected health information of Plaintiff's' patients;

4 WHEREAS, upon consideration of the Parties' Joint Motion and pursuant to Rule 26(c) of the
5 Federal Rules of Civil Procedure and 45 C.F.R. § 164.512(e)(1),¹ the Court finds good cause to enter
6 this Agreed Protective Order (Protective Order or Order).

7 It is hereby **AGREED** to and **ORDERED** that:

8 **1. Purpose and Scope.** This Order and any amendments or modifications hereto shall
9 govern the handling of documents, deposition testimony, deposition exhibits, deposition transcripts,
10 written discovery requests, interrogatory responses, responses to requests to admit, responses to
11 requests for documents, responses to subpoenas, hearing and/or trial testimony, hearing and/or trial
12 exhibits, electronically stored information, and any other information or material produced, given,
13 exchanged, or disclosed including any information contained therein or derived therefrom (Disclosed
14 Materials) that may contain confidential information, including commercially sensitive or proprietary
15 information deemed private under state and federal law, including but not limited to the Health
16 Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder
17 (HIPAA) and/or California law. Such information will be designated by a Party or non-party providing
18 the Disclosed Materials (each a Producing Party) as containing or reflecting "Confidential
19 Information," "Protected Health Information," or "Confidential Attorney Eyes Only Information" in
20 accordance with the terms of this Protective Order (collectively referred to as Protected Information).

21 **2. Confidential Information.** For purposes of this Order, "Confidential Information"
22 means information comprised of confidential or proprietary technical, scientific, financial, business,
23 health, or medical information, in accordance with Fed. R. Civ. P. 26(c)(7), or other information
24 required by law or agreement to be kept confidential. Confidential Information does not include, and
25 this Protective Order does not apply to, information that is already in the knowledge or possession of
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27
28 ¹ 45 C.F.R. § 164.512(e)(1) sets forth specific uses and disclosures of health information allowed in
judicial and administrative proceedings.

1 the Receiving Party unless that Party is already bound by agreement not to disclose such information,
2 or information that has been disclosed to the public or third persons in a manner making such
3 information no longer confidential.

4 **3. Protected Health Information.** The Parties and their attorneys are hereby authorized
5 to receive, subpoena, and transmit “Protected Health Information” of Plaintiff’s patients to the extent
6 and subject to the conditions outlined in this Protective Order. For purposes of this Order, “Protected
7 Health Information” shall have the same scope and definition as set forth in 45 C.F.R. §§ 160.103 and
8 164.501. Without limiting the generality of the foregoing, Protected Health Information includes
9 without limitation health information, including demographic information, relating to: (a) the past,
10 present, or future physical or mental health or condition of an individual; (b) the provision of health
11 care to an individual; or (c) the past, present, or future payment for the provision of health care to an
12 individual, which identifies or reasonably could be expected to identify the individual. “Protected
13 Health Information” also includes without limitation medical bills, claims forms, charges sheets,
14 medical records, medical charts, test results, notes, dictation, invoices, itemized billing statements,
15 remittance advice forms, explanation of benefits, checks, notices, and requests, and includes all notes,
16 summaries, compilations, extracts, abstracts, or oral communications that are based on or derived from
17 “Protected Health Information,” regardless of form or format. “Protected Health Information” further
18 includes information that contains the following identifiers of a patient/insured/member or of a relative,
19 employer, or household member of a patient/insured/member:

- 20 a. names;
- 21 b. all geographic subdivisions smaller than a State, including street address, city, county,
22 precinct, and zip code;
- 23 c. all elements of dates (except year) for dates directly related to an individual, including
24 birth date, admission date, discharge date, age, and date of death;
- 25 d. telephone numbers;
- 26 e. fax numbers;
- 27 f. electronic mail addresses;
- 28 g. social security numbers;

- 1 h. medical record numbers;
- 2 i. health plan beneficiary numbers;
- 3 j. account numbers;
- 4 k. certificate/license numbers; vehicle identifiers and serial numbers, including license
5 plate numbers;
- 6 l. device identifiers and serial numbers;
- 7 m. web universal resource locators (URLs);
- 8 n. internet protocol (IP) address numbers;
- 9 o. biometric identifiers, including finger and voice prints;
- 10 p. full face photographic images and any comparable images; and
- 11 q. any other unique identifying number, characteristic, or code, except as permitted by 45
12 C.F.R. § 164.514(c).

13 “Protected Health Information” also includes all notes, summaries, compilations, extracts,
14 abstracts, or oral communications that contain, are based on, or are derived from “Protected Health
15 Information.” The Parties and their attorneys and any future parties and their attorneys in this Action,
16 and any third party or non-party, are hereby authorized to receive, subpoena, disclose, and transmit
17 the Protected Health Information of Plaintiff’s patients to the extent of and subject to the conditions
18 outlined herein. This Order does not control or limit the use by a Party of Protected Health Information
19 otherwise possessed by the Parties outside this Action. All Protected Health Information provided to
20 a Receiving Party shall be maintained securely, with adequate safeguards, as required by state and
21 federal law, including HIPAA, by counsel of record.

22 **4. Confidential Attorney Eyes Only.** For purposes of this Order, “Confidential Attorney
23 Eyes Only” information means information deemed especially sensitive, which may include, but is
24 not limited to, confidential research and development, financial, technical, marketing, or any other
25 sensitive trade secret information. Confidential Attorney Eyes Only Information does not include
26 information that is already in the knowledge or possession of the Party to whom disclosure is made
27 unless that Party is already bound by agreement not to disclose such information, or information that
28

1 has been disclosed to the public or third persons in a manner making such information no longer
2 confidential.

3 **5. Designation of Information.** The designation of Protected Information for purposes of
4 this Order shall be made in the following manner:

5 a. In the case of documents and written discovery responses or other Disclosed Materials,
6 by affixing the legend “CONFIDENTIAL,” “CONFIDENTIAL - PROTECTED
7 HEALTH INFORMATION,” or “CONFIDENTIAL ATTORNEY EYES ONLY” to
8 each page containing any Protected Information.

9 b. In the case of electronically stored information in any form (including embedded data
10 and metadata) (collectively, “Electronic Data”), by designating the Electronic Data as
11 Protected Information in a cover letter accompanying the production of the Electronic
12 Data. Where feasible, counsel for the Producing Party will also mark the disk, tape or
13 other electronic media on which the Electronic Data is produced with the appropriate
14 designation. If a Party reduced Protected Electronic Data to hard copy form, it shall
15 mark the hard copy with the appropriate designation. Whenever any Protected
16 Electronic Data is copied, all copies shall be marked with the appropriate designation.

17 c. In the case of depositions or other testimony: (i) by a statement on the record, by
18 counsel, at the time of such disclosure, or (ii) by written notice sent to all counsel of
19 record within fourteen (14) business days after receipt of the transcript of the testimony.
20 If no such designation is made at the time of testimony or within this fourteen (14)
21 calendar day period (during which period, the transcript must be treated as Confidential
22 Attorneys Eyes Only and as containing Protected Health Information), the entire
23 transcript will be considered devoid of Confidential Information or Confidential
24 Attorneys Eyes Only Information. The transcript will continue to be treated as
25 containing Protected Health Information unless otherwise agreed to by the Parties. The
26 Parties should attempt to prevent the disclosure of Protected Health Information in
27 transcripts by redacting or substituting any individually identifiable information such
28 as the patient name, address, date of birth, age, phone number, etc.

1 d. Each Party and the court reporter must attach a copy of any final and timely written
2 designation notice to the transcript and each copy of the transcript in its possession,
3 custody or control, and the portions designated in such notice must thereafter be treated
4 in accordance with this Protective Order. It is the responsibility of counsel for each
5 Party to maintain materials containing Confidential Information, Protected Health
6 Information, or Confidential Attorney Eyes Only Information in a secure manner and
7 appropriately identified so as to allow access to such information only to such persons
8 and under such terms as is permitted under this Protective Order.

9 **6. Inadvertent Failure to Designate.** The inadvertent failure to designate or withhold
10 any information as Confidential Information, Protected Health Information or Confidential Attorneys
11 Eyes Only Information will not be deemed to waive a later claim as to its confidential nature either on
12 the specific information disclosed or on any other information relating thereto or on the same or related
13 subject, or to stop the Producing Party from designating such information as Protected Information at
14 a later date in writing and with particularity. The information must be treated by the Receiving Party
15 as confidential from the time the Receiving Party is notified in writing of the change in the designation.

16 **7. Inadvertent Disclosure.** In the event of an inadvertent disclosure of another party's
17 Confidential Information to a non-Qualified Recipient, the party making the inadvertent disclosure
18 shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made
19 that it contains Confidential Information subject to this Order; (ii) make all reasonable efforts to
20 preclude dissemination or use of the Confidential Information by the person to whom disclosure was
21 inadvertently made including, but not limited to, obtaining all copies of such materials from the non-
22 Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the
23 disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure
24 against the dissemination or use of the information.

25 **8. Challenge to Designations.** Any Party may challenge a Producing Party's designation
26 of Confidential Information or Confidential Attorney Eyes Only Information at any time by giving
27 written notice to the Producing Party that it objects to the designation. Such notice shall specifically
28 identify the Disclosed Material at issue and state the reasons for questioning the designation. The

1 objecting and Producing Party shall confer in good faith to resolve any such dispute. If the Parties are
2 unable to resolve the dispute, the objecting party may apply to the Court for a ruling that the Disclosed
3 Material is inappropriately designated, giving notice to the Producing Party. If such a motion is made,
4 the Producing Party will have the burden to establish that the designation is proper. Until the Court
5 rules on the motion, the documents shall be treated as originally designated. For avoidance of doubt,
6 the Parties shall not challenge the designation of Protected Health Information that reasonably falls
7 within the definition set forth in this Protective Order.

8 **9. Disclosure and Use of Designated Information.** Disclosed Material designated as
9 Protected Information may only be used for purposes of preparation, trial, and appeal of this Action.
10 Protected Information may not be used or disclosed under any circumstances for any other purpose.

- 11 a. Subject to Paragraph 9 below, Confidential Information and Protected Health
12 Information may be disclosed by the Receiving Party only to the following individuals,
13 provided that such individuals are informed of the terms of this Protective Order: (a)
14 employees of the Receiving Party who are required in good faith to provide assistance
15 in the conduct of this litigation, including any settlement discussions; (b) in-house
16 counsel of the Receiving Party; (c) outside counsel for the Receiving Party; (d)
17 supporting personnel employed by (b) and (c), such as paralegals, legal secretaries, data
18 entry clerks, legal clerks, and private photocopying services; (e) experts or consultants;
19 (f) any persons who furnish services such as document coding, image scanning, mock
20 trial, jury profiling, translation services, court reporting services, demonstrative exhibit
21 preparation, or the creation of any computer database from documents; and (g) the
22 Court, court reporters, videographers, stenographers, and court personnel; and (h) any
23 other person ordered by the Court or agreed to in writing by the Parties. Each person
24 identified in Paragraph 8 to whom Protected Information is shown or to whom
25 information contained in such materials is to be revealed (other than the Court and court
26 personnel, in-house counsel, and outside counsel and supporting personnel employed
27 by outside counsel) shall first be required to agree in writing to be bound by the terms
28 of this Order, in the form attached as Exhibit A to this Order, and counsel employing

1 such persons or making such disclosure to such persons shall retain that signed, written
2 agreement.

3 b. Subject to Paragraph 9 below, Confidential Attorney Eyes Only Information may be
4 disclosed by the Receiving Party only to the following individuals, provided that such
5 individuals are informed of the terms of this Protective Order: (a) outside counsel for
6 the Receiving Party; (b) supporting personnel employed by outside counsel, such as
7 paralegals, legal secretaries, data entry clerks, legal clerks, private photocopying
8 services; (c) experts or consultants; (d) any persons who furnish services such as
9 document coding, image scanning, mock trial, jury profiling, translation services, court
10 reporting services, demonstrative exhibit preparation, or the creation of any computer
11 database from documents; (e) the Court, court reporters, videographers, stenographers,
12 and court personnel; and (f) any other person ordered by the Court or agreed to in
13 writing by the Parties.

14 **10. Application of this Protective Order to Persons with Access to Protected**
15 **Information.** Each person given access to Protected Information designated as such pursuant to this
16 Order shall be advised that the Protected Information is being disclosed pursuant to and subject to the
17 terms of this Order and may not be disclosed or used other than as set forth in this Order.

18 **11. Third-Parties; Copy of Protective Order Must Be Served With Any Subpoena.** In
19 the event that a Party seeks discovery from a non-party to this action, the non-party may invoke the
20 terms of this Order in writing to all Parties to the Action with respect to any Disclosed Material to be
21 provided to the Requesting Party by the non-party. The term “Producing Party” encompasses not only
22 the Parties to this Action but third parties who may disclose or produce information, e.g., in response
23 to a subpoena. After this Order is entered by the Court, a copy of this Order shall be included with
24 each subpoena served on any person or entity that is not a Party to this Action.

25 **12. Previously Obtained Material.** Nothing in this Protective Order shall preclude any
26 Party to this Protective Order or its attorney from showing Disclosed Material designated as
27 Confidential Information or Confidential Attorney Eyes Only Information to an individual who
28 prepared, authored or received the Disclosed Material prior to the filing of this Action.

1 **13. Filing Protected Information with the Court.** Any Party wishing to submit any
2 pleading, brief, memorandum, motion, letter, affidavit or other document filed with the Court that
3 discloses, summarizes, describes, characterizes or otherwise communicates Protected Information
4 must file such information under seal in accordance with the sealing procedures set forth in the Local
5 Rules, unless another procedure is otherwise agreed to in writing by the Parties.

6 **14. Inadvertent Production of Privileged Material.** Nothing in this Protective Order
7 shall require production of documents, information or other material that a Party contends is protected
8 from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine,
9 or immunity. If documents, information or other Disclosed Materials subject to a claim of attorney-
10 client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or
11 unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver
12 of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or
13 unintentionally produces documents, information or other Disclosed Materials it reasonably believes
14 are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine,
15 or immunity may obtain the return of such documents, information or other material by promptly
16 notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally
17 produced documents, information or other material. The recipient(s) shall gather and return all copies
18 of such documents, information or other material to the producing Party, except for any pages
19 containing privileged or otherwise protected markings by the recipient(s), which pages shall instead
20 be destroyed and certified as such to the producing Party. The terms of this Order shall apply to all
21 Privileged Material produced during the course of this Action, including materials produced prior to
22 entry of this Order.

23 **15.** The production of documents and information shall not constitute a waiver in this
24 Action, or any other litigation, arbitration, proceeding, or matter, of any privilege (including, without
25 limitation, the attorney-client privilege and the attorney work product privilege) applicable to the
26 produced materials or for any other privileged or immune materials containing the same or similar
27 subject matter. This Order encompasses an Order under Federal Rule of Evidence 502(d) that any
28 privilege that may have been raised in documents produced in this Action is not waived as a result of

1 disclosure of those documents in connection with this Action, and this Order governs all persons or
2 entities in all state or federal proceedings, whether or not they were parties to this proceeding. The fact
3 of production of privileged information or documents by any Producing Party in this Litigation shall
4 not be used as a basis for arguing that a claim of privilege or work product has been waived in any
5 other proceeding. Without limiting the foregoing, this Order shall not affect the Parties' legal rights to
6 assert privilege claims over documents in any other proceeding.

7 **16. Court Retains Jurisdiction.** This Protective Order shall survive the termination of this
8 Action. This Court expressly retains jurisdiction over this Action for enforcement of the provisions of
9 this Protective Order following the final resolution of this Action. Each person or entity to whom
10 disclosure of any Disclosed Materials is made agrees to subject himself/herself/itself to the jurisdiction
11 of the Court and, to the extent necessary to enforce this Protective Order.

12 **17. Return or Destruction of Protected Information.** Within sixty (60) calendar days
13 after final judgment in this Action, including the exhaustion of all appeals, or within sixty(60) calendar
14 days after dismissal pursuant to a settlement agreement, each Party or other person subject to the terms
15 of this Protective Order is under an obligation to destroy or return to the Producing Party all materials
16 and documents containing Confidential Information, Protected Health Information or Confidential
17 Attorney Eyes Only Information, and to certify to the Producing Party that this destruction or return
18 has been done. However, outside counsel for any Party is entitled to retain all court papers, trial
19 transcripts, exhibits, and attorney work provided that any such materials are maintained and protected
20 in accordance with the terms of this Protective Order.

21 **18. No Prejudice.** Producing or receiving Protected Information or otherwise complying
22 with the terms of this Protective Order, will not (a) operate as an admission by any Party that any
23 particular Confidential Information or Confidential Attorney Eyes Only Information contains or
24 reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the
25 rights of a Party to object to the production of information or material that the Party does not consider
26 to be within the scope of discovery; (c) prejudice the rights of a Party to seek a determination by the
27 presiding judge that particular materials be produced; (d) prejudice the rights of a Party to apply to the
28 presiding judge for further protective orders; or (e) prevent the Parties from agreeing in writing to alter

1 or waive the provisions or protections provided for in this Protective Order with respect to any
2 particular information or material.

3 **19. Other Proceedings.** By entering this Protective Order and limiting the disclosure of
4 information in this case, the presiding judge does not intend to preclude another court from finding
5 that information may be relevant and subject to disclosure in another case. Any person or Party subject
6 to this Protective Order who may be subject to a motion to disclose another Party’s information
7 designated Confidential pursuant to this Protective Order must promptly notify that party of the motion
8 so that the party may have an opportunity to appear and be heard on whether that information should
9 be disclosed.

10 **20. Modification of the Protective Order.** This Protective Order may be modified by
11 further stipulation of the parties, subject to Court approval, and a Party may apply to the Court for
12 relief from this Protective Order after giving notice to counsel of record and conferring with opposing
13 counsel in an effort to reach agreement on any proposed modification.

14 **21. No Waiver or Modification.** This Protective Order shall not be construed as, and does
15 not constitute, a novation of any existing obligations of confidentiality a Party may owe another Party
16 or otherwise by operation of law. To the extent they already exist, all such obligations remain in full
17 force and effect notwithstanding this Protective Order.

18 **22. Violation of the Protective Order.** The Court shall have discretion to impose
19 sanctions, including reasonable monetary fines, for violations of the provisions of this Order. All other
20 remedies available to any person injured by a violation of this Protective Order are fully reserved.

21 **23.** Nothing in this Protective Order shall restrict or otherwise affect the admissibility of
22 evidence under the federal rules.

1 **AGREED:**

2
3 /s/ Alan Nesbit
4 Alan Nesbit
5 NESBIT LAW GROUP US LLP
6 8383 Wilshire Blvd, Ste
7 Beverly Hills, CA 90211
8 Tel: 323-456-8605

/s/ Jonathan M. Herman
 Jonathan M. Herman
 JONATHAN M HERMAN, PC
 800633 West Fifth Street
 26th and 28th Floors
 Los Angeles, California, 90071
 Tel: (214) 624-9805

9
10 *Attorney for Plaintiff*

Attorney for Defendants

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12 SO ORDERED on July 29, 2022.



13 _____
14 Hon. John E. McDermott

15 United States District Judge
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1 **Exhibit A**

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9 **UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

10 **LOS ANGELES CENTER FOR**
11 **ORAL & MAXILLOFACIAL**
12 **SURGERY,**

13 **Plaintiff**

14 vs.

15 **AETNA LIFE INSURANCE**
16 **COMPANY, et al.,**

Defendants.

) CASE NO. 2:22-cv-00348-MEMF-JEM

) Assigned to Hon. Mamme Ewusi-Mensah
) Frimpong

) **AGREEMENT TO BE BOUND BY**
) **HIPAA-QUALIFIED**
) **PROTECTIVE ORDER**

17 I hereby affirm that:

18 Information, including documents and things, designated as “Confidential
19 Information,” “Protected Health Information” or “Confidential Attorney Eyes Only
20 Information,” as defined in the Protective Order entered in the above-captioned action
21 (Protective Order), is being provided to me pursuant to the terms and restrictions of the
22 Protective Order.

23 I have been given a copy of and have read the Protective Order.

24 I am familiar with the terms of the Protective Order and I agree to comply with
25 and to be bound by its terms.

26 I submit to the jurisdiction of this Court for enforcement of the Protective Order.

27 I agree not to use any Confidential Information, Protected Health Information or
28 Confidential Attorney Eyes Only Information disclosed to me pursuant to the Protective

1 Order except for purposes of the above-captioned litigation and not to disclose any of
2 this information to persons other than those specifically authorized by the Protective
3 Order, without the express written consent of the Party who designated the information
4 as protected or by order of the presiding judge.

5 I also agree to notify any stenographic, clerical, or technical personnel who are
6 required to assist me of the terms of this Protective Order and of its binding effect on
7 them and me.

8 I understand that I am to retain all documents or materials designated as or
9 containing Confidential Information, Protected Health Information or Confidential
10 Attorney Eyes Only Information in a secure manner, and that all such documents and
11 materials are to remain in my personal custody until the completion of my assigned
12 duties in this matter, whereupon all such documents and materials, including all copies
13 thereof, and any writings prepared by me containing any Confidential Information,
14 Protected Health Information or Confidential Attorney Eyes Only Information are to be
15 returned to counsel who provided me with such documents and materials.

16
17
18 _____
Signed

19
20 _____
Printed Name

21
22 _____
Date