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13 Attorneys for Defendants
 14 COVANCE, INC. AND COVANCE
 LABORATORIES, INC.

16 UNITED STATES DISTRICT COURT
 17 CENTRAL DISTRICT OF CALIFORNIA

18 MARK TYLER THOMAS, an
 19 individual,

20 Plaintiff,

21 v.

22 COVANCE, INC., a corporation;
 23 COVANCE LABORATORIES,
 INC., a corporation; and DOES 1 TO
 24 100, inclusive,

25 Defendants.

Case No. EDCV14-01224-CJC (MRWx)

**STIPULATION AND PROTECTIVE
 ORDER**

Complaint Filed: May 16, 2014
 Discovery Cut-Off: July 27, 2015
 Pretrial Conference: Oct. 26, 2015
 Trial Date: Nov. 3, 2015

1 **I. INTRODUCTION**

2 **A. Purpose And Limitations**

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

15 **B. Good Cause Statement**

16 This action involves private medical information for which special protection
17 from public disclosure and from use for any purpose other than prosecution of this
18 action is warranted. Such material and information consists of, among other things,
19 psychiatrists chart notes, results of psychiatric testing, physicians chart notes, and
20 other medical information generally unavailable to the public, or which may be
21 privileged or otherwise protected from disclosure under applicable state or federal
22 statutes, court rules, case decisions, or common law. Accordingly, to expedite the
23 flow of information, to facilitate the prompt resolution of disputes over confidentiality
24 of discovery materials, to adequately protect information the parties are entitled to
25 keep confidential, to ensure that the parties are permitted reasonable necessary uses of
26 such material in preparation of the litigation, and serve the ends of justice, a protective
27 order for such information is justified in this matter. It is the intent of the parties that
28 information will not be designated as confidential for tactical reasons and that nothing

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1 be so designated without a good faith belief that it has been maintained in a
2 confidential, non-public manner, and there is good cause why it should not be a part of
3 the public record of this case.

4 **II. DEFINITIONS**

5 **A. Action:** *Mark Tyler Thomas v. Covance, Inc., et al.*, Case No. EDCV 14-
6 01224-CJC (MRWx)

7 **B. Challenging Party:** A Party or Non-Party that challenges the designation
8 of information or items under this Order.

9 **C. “CONFIDENTIAL” Information or Items:** Information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for protection
11 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
12 Cause Statement.

13 **D. Counsel:** Outside Counsel of Record and House Counsel (as well as their
14 support staff).

15 **E. Designating Party:** a Party or Non-Party that designates information or
16 items that it produces in disclosures or in the responses to discovery as
17 “CONFIDENTIAL”

18 **F. Disclosure or Discovery Material:** All items or information, regardless of
19 the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced or
21 generated in disclosures or responses to discovery in this matter.

22 **G. Expert:** A person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a party or its counsel to serve as an
24 expert witness or as a consultant in this Action.

25 **H. House Counsel:** Attorneys who are employees of a party to this Action.
26 House Counsel does not include Outside Counsel of Record or any other outside
27 counsel.

28 **I. Non-Party:** Any natural person, partnership, corporation, association, or
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1 other legal entity not named as a Party to this Action.

2 **J. Outside Counsel of Record:** Attorneys who are not employees of a party
3 to this Action but are retained to represent or advise a party to this Action and have
4 appeared in this Action on behalf of that party or are affiliated with a law firm which
5 has appeared on behalf of that party, and includes support staff.

6 **K. Party:** Any part to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).

9 **L. Producing Party:** A Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

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

15 **N. Protected Material:** Any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”

17 **O. Receiving Party:** A Party that receives Disclosure or Discovery Material
18 from a Producing Party.

19 **III. SCOPE**

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

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

1 **IV. DURATION**

2 Even after the final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designated Party agrees otherwise
4 in writing or a court order otherwise directs. Final disposition shall be deemed to be
5 the later of (1) dismissal of all claims and defenses in this Action, with or without
6 prejudice; and (2) final judgment herein after the completion and exhaustion of all
7 appeals, rehearings, remands, trials, or reviews of this Action, including the time
8 limits for filing any motions or applications for extension of time pursuant to
9 applicable law.

10 **V. DESIGNATING PROTECTED MATERIAL**

11 **A. Exercise Of Restraint And Care In Designating Material For
12 Protection**

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

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

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

1 **B. Manner and Timing of Designations**

2 Except as otherwise provided in this Order (see, e.g., second paragraph of
3 Section 1 below), or as otherwise stipulated or ordered, Disclosure or Discovery
4 Material that qualifies for protection under this Order must be clearly so designated
5 before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

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

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which document it would like copied and produced. During the inspection and before
17 the designation, all of the material made available for inspection shall be deemed
18 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
19 copied and produced, the Producing Party must determine which documents, or
20 portions thereof, qualify for protection under this Order. Then, before producing the
21 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”
22 to each page that contains Protected Material. If only a portion or portions of the
23 material on a page qualifies for protection, the Producing Party also must clearly
24 identify the protected portion(s) (e.g., by making appropriate markings in the
25 margins).

26 **2.** For testimony given in depositions that the Designating Party
27 identify the Disclosure or Discovery Material on the record, before the close of the
28 deposition all protected testimony.

1 **3.** For information produced in some form other than documentary
2 and for any other tangible items, that the Producing Party affix in a prominent place
3 on the exterior of the container or containers in which the information is stored the
4 legend “CONFIDENTIAL.” If only a portion or portions of the information warrants
5 protection, the Producing Party, to the extent practicable, shall identify the protected
6 portion(s).

7 **C. Inadvertent Failures To Designate**

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

13 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 **A. Timing Of Challenges**

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

17 **B. Meet and Confer**

18 The Challenging Party shall initiate the dispute resolution process (and, if
19 necessary, file a discovery motion) under Local Rule 37.1 et seq.

20 **C. Burden Of Persuasion**

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

1 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

2 **A. Basic Principles**

3 A Receiving Party may use Protected Material that is disclosed or produced by
4 another Party or by a Non-Party in connection with this Action only for prosecuting,
5 defending, or attempting to settle this Action. Such Protected Material may be
6 disclosed only to the categories of persons and under the conditions described in this
7 Order. When the Action has been terminated, a Receiving Party must comply with the
8 provisions of Section XIII below (FINAL DISPOSITION).

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

12 **B. Disclosure Of “CONFIDENTIAL” Information Or Items**

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

16 1. The Receiving Party’s Outside Counsel of Record in this Action,
17 as well as employees of said Outside Counsel of Record to whom it is reasonably
18 necessary to disclose the information for this Action;

19 2. The officers, directors, and employees (including House Counsel)
20 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

21 3. Experts (as defined in this Order) of the Receiving Party to whom
22 disclosure is reasonably necessary for this action and who have signed the
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 4. The Court and its personnel;

25 5. Court reporters and their staff;

26 6. Professional jury or trial consultants, mock jurors, and Professional
27 Vendors to whom disclosure is reasonably necessary for this Action and who have
28 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 7. The author or recipient of a document containing the information
2 or a custodian or other person who otherwise possessed or knew the information;

3 8. During their depositions, witnesses, and attorneys for witnesses, in
4 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
5 party requests that the witness sign the form attached as Exhibit A hereto; and (2) they
6 will not be permitted to keep any confidential information unless they sign the
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
8 by the Designating Party or ordered by the court. Pages of transcribed deposition
9 testimony or exhibits to depositions that reveal Protected Material may be separately
10 bound by the court reporter and may not be disclosed to anyone except as permitted
11 under this Stipulated Protective Order; and

12 9. Any mediator or settlement officer, and their supporting personnel,
13 mutually agreed upon by any of the parties engaged in settlement discussions.

14 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
15 **IN OTHER LITIGATION**

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

19 A. Promptly notify in writing the Designating Party. Such notification shall
20 include a copy of the subpoena or court order;

21 B. Promptly notify in writing the party who caused the subpoena or order to
22 issue in the other litigation that some or all of the material covered by the subpoena or
23 order is subject to a Protective Order. Such notification shall include a copy of this
24 Stipulated Protective Order; and

25 C. Cooperate with respect to all reasonable procedures sought to be pursued
26 by the Designating Party whose Protected Material may be affected.

27 If the Designating Party timely seeks a protective order, the Party served with
28 the subpoena or court order shall not produce any information designated in this

1 Action as “CONFIDENTIAL” before a determination by the court from which the
2 subpoena or order issued, unless the Party has obtained the Designating Party’s
3 permission. The Designating Party shall bear the burden and expense of seeking
4 protection in that court of its confidential material and nothing in these provisions
5 should be construed as authorizing or encouraging a Receiving Party in this Action to
6 disobey a lawful directive from another court.

7 **IX. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
8 **PRODUCED IN THIS LITIGATION**

9 **A.** The terms of this Order are applicable to information produced by a Non-
10 Party in this Action and designated as “CONFIDENTIAL.” Such information
11 produced by Non-Parties in connection with this litigation is protected by the
12 remedies and relief provided by this Order. Nothing in these provisions should be
13 construed as prohibiting a Non-Party from seeking additional protections.

14 **B.** In the event that a Party is required, by a valid discovery request, to
15 produce a Non-Party’s confidential information in its possession, and the Party is
16 subject to an agreement with the Non-Party not to produce the Non-Party’s
17 confidential information, then the Party shall:

18 **1.** Promptly notify in writing the Requesting Party and the Non-Party
19 that some or all of the information requested is subject to a confidentiality agreement
20 with a Non-Party;

21 **2.** Promptly provide the Non-Party with a copy of the Stipulated
22 Protective Order in this Action, the relevant discovery request(s), and a reasonably
23 specific description of the information requested; and

24 **3.** Make the information requested available for inspection by the
25 Non-Party, if requested.

26 **C.** If the Non-Party fails to seek a protective order from this court within 14
27 days of receiving the notice and accompanying information, the Receiving Party may
28 produce the Non-Party’s confidential information responsive to the discovery request.

1 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
2 any information in its possession or control that is subject to the confidentiality
3 agreement with the Non-Party before a determination by the court. Absent a court
4 order to the contrary, the Non-Party shall bear the burden and expense of seeking
5 protection in this court of its Protected Material.

6 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
8 Protected Material to any person or in any circumstance not authorized under this
9 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
10 writing the Designating Party of the unauthorized disclosure, (b) use its best efforts to
11 retrieve all unauthorized copies of the Protected Material, (c) inform the person or
12 persons to whom unauthorized disclosures were made of all the terms of this Order,
13 and (d) request such person or persons execute the “Acknowledgment and Agreement
14 to Be Bound” (Exhibit A).

15 **XI. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other protection,
19 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
20 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
21 may be established in an e-discovery order that provides for production without prior
22 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
23 parties reach an agreement on the effect of disclosure of a communication or
24 information covered by the attorney-client privilege or work product protection, the
25 parties may incorporate their agreement in the stipulated protective order submitted to
26 the court.
27
28

1 **XII. MISCELLANEOUS**

2 **A. Right To Further Relief**

3 Nothing in this Order abridges the right of any person to seek its modifications
4 by the Court in the future.

5 **B. Right to Assert Other Objections**

6 By stipulating to the entry of this Protective Order no Party waives any right it
7 otherwise would have to object to disclosing or producing any information or item on
8 any ground not addressed in this Stipulated Protective Order. Similarly, no Party
9 waives any right to object on any ground to use in evidence of any of the material
10 covered by this Protective Order.

11 **C. Filing Protected Material**

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

18 **XIII. FINAL DISPOSITION**

19 After the final disposition of this Action, as defined in paragraph 4, within 60
20 days of a written request by the Designating Party, each Receiving Party must return
21 all protected Material to the Producing Party or destroy such material. As used in this
22 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
23 summaries, and any other format reproducing or capturing any of the Protected
24 Material. Whether the Protected Material is returned or destroyed the Receiving Party
25 must submit a written certification to the Producing Party (and, if not the same person
26 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
27 category, where appropriate) all the Protected Material that was returned or destroyed
28 and (2) affirms that the Receiving Party has not retained any copies, abstracts,

1 compilations, summaries or any other format reproducing or capturing any of the
2 Protected Material. Notwithstanding this provisions, Counsel are entitled to retain an
3 archival copy of all pleading, motion papers, trial, depositions, and hearing transcripts,
4 legal memoranda, correspondence, deposition and trial exhibits, expert reports,
5 attorney work product, and consultant and expert work product, even if such materials
6 contain or constitute Protected Material remain subject to the Protective Order as set
7 forth in Section IV (DURATION).

8 **XIV. VIOLATIONS**

9 Any violation of this Order may be punished by any and all appropriate
10 measures including, without limitation, contempt proceedings and/or monetary
11 sanctions.

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13 Dated: May 5, 2015

14
15 */s/ Assaf Lichtash*
16 ASSAF LICHTASH
17 PERSHING SQUARE LAW FIRM
Attorneys for Plaintiff
MARK TYLER THOMAS

18 Dated: May 5, 2015

19
20 */s/ Jody A. Landry*
21 JODY A. LANDRY
22 PETER M. PEREZ
LITTLER MENDELSON, P.C.
Attorneys for Defendants
23 COVANCE, INC. AND COVANCE
LABORATORIES, INC.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May 7, 2015



HON. MICHAEL R. WILNER
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the central District of California on _____ in the case of *Mark Tyler Thomas v. Convance, Inc., et al.*, Case No. EDCV14-01224-CJC (MRWx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I Will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City or State where sworn and signed: _____

Printed Name: _____

Signature: _____

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