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

22 JUSTIN A. GOPEN,
 23 Plaintiff,
 24 vs.
 25 THE REGENTS OF THE
 26 UNIVERSITY OF CALIFORNIA,
 27 et al.
 28 Defendants

Case No.: SACV15-02062 JVS (KESx)
**ORDER RE:
 STIPULATED PROTECTIVE
 ORDER**
 Complaint filed: December 11, 2015
 First Amended Complaint filed:
 March 13, 2016
 Judge: The Honorable James V. Selna
 Magistrate Judge: Karen E. Scott

1 **STIPULATED PROTECTIVE ORDER**

2 **1. INTRODUCTION**

3 **A. PURPOSES AND LIMITATIONS**

4 The parties in this matter possess confidential and sensitive information and
5 medical records that are protected under various doctrines. This confidential and
6 private information was obtained from confidential communications between
7 plaintiff, in his capacity as a medical patient, and various health care professionals.
8 Because Discovery in this action is likely to involve documents containing
9 confidential or private information for which special protection from public
10 disclosure is warranted, the parties hereby stipulate to and petition the Court to
11 enter the following Stipulated Protective Order which provides for protecting
12 certain confidential information from public disclosure.

13 The parties acknowledge that this Order does not confer blanket protections
14 on all disclosures or responses to discovery and that the protection it affords is
15 relates to limiting public disclosure of confidential information or items that are
16 entitled to this treatment under the applicable legal principles. The parties further
17 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
18 Order does not entitle them to file confidential information under seal with the
19 Court, unless the filing Party has first obtained the appropriate permission from the
20 Court. Civil Local Rule 79-5 sets forth the procedures that must be followed and
21 the standards that will be applied when a Party seeks permission from the court to
22 file material under seal.

23 **B. GOOD CAUSE STATEMENT**

24 Documents produced in this action are likely to involve confidential and
25 sensitive information that is protected under various doctrines and privileges
26 including, but not limited to, doctor/patient confidentiality, patient/therapist
27 confidentiality, and the Health Insurance Portability and Accountability Act
28 (“HIPPA”) for which special protection from public disclosure and from use for

1 any unauthorized purpose is warranted. Such confidential information exists in
2 confidential medical records and was communicated under confidential
3 circumstances between a patient and various health care professionals. This
4 information is otherwise generally unavailable to the public, or which may be
5 privileged or otherwise protected from disclosure under state or federal statutes,
6 court rules, case decisions, or common law. Any information that is produced in
7 discovery in this matter shall be designated and prominently marked as
8 “CONFIDENTIAL”, when the public disclosure of such information would
9 violate doctor/patient confidentiality, patient/therapist confidentiality, the Health
10 Insurance Portability and Accountability Act (“HIPPA”) or that would in the
11 reasonable opinion of a neutral party have a prejudicial effect on a Party that clearly
12 outweighs the probative value of the information as it relates to this litigation.

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

23 **2. DEFINITIONS**

24 2.1 Action: This pending federal law suit captioned Justin A.
25 Gopen v. The Regents of the University of California, et al., Case Number
26 SACV15-02062 JVS (KESx).

27 2.2 Challenging Party: a Party or Non-Party that challenges the
28 designation of information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information
2 (regardless of how it is generated, stored or maintained) or tangible things that
3 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified
4 above in the Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as
6 well as their support staff).

7 2.5 Designating Party: a Party or Non-Party that designates
8 information or items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL”.

10 2.6 Disclosure or Discovery Material: all items or information,
11 regardless of the medium or manner in which it is generated, stored, or maintained
12 (including, among other things, testimony, transcripts, and tangible things), that
13 are produced or generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a
15 matter pertinent to the litigation who has been retained by a Party or its counsel to
16 serve as an expert witness or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a Party. House
18 Counsel does not include Outside Counsel of Record or any other outside counsel.

19 2.9 Non-Party: any natural person, partnership, corporation,
20 association, or other legal entity not named as a Party to this action.

21 2.10 Outside Counsel of Record: attorneys who are not employees
22 of a Party, but are retained to represent or advise a Party and have appeared in this
23 Action on behalf of that Party or are affiliated with a law firm which has appeared
24 on behalf of that Party, and includes support staff.

25 2.11 Party: any party to this Action, including all of its officers,
26 directors, employees, consultants, retained experts, and Outside Counsel of Record
27 (and their support staffs).

28 2.12 Producing Party: a Party or Non-Party that produces Disclosure

1 or Discovery Material in this Action.

2 2.13 Professional Vendors: persons or entities that provide litigation
3 support services (e.g., photocopying, videotaping, translating, preparing exhibits
4 or demonstrations, and organizing, storing, or retrieving data in any form or
5 medium) and their employees and subcontractors.

6 2.14 Protected Material: any Disclosure or Discovery Material that
7 is or should be designated as “**CONFIDENTIAL**”.

8 2.15 Receiving Party: a Party that receives Disclosure or Discovery
9 Material from a Producing Party.

10 **3. SCOPE**

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

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

18 **4. DURATION**

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

27 **5. DESIGNATING PROTECTED MATERIAL**

28 5.1 Exercise of Restraint and Care in Designating Material for

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

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

13 If it comes to a Designating Party's attention that information or items that
14 it designated for protection do not qualify for protection, that Designating Party
15 must promptly notify all other Parties that it is withdrawing the inapplicable
16 designation.

17 5.2 Manner and Timing of Designations. Except as otherwise
18 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as
19 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
20 protection under this Order must be clearly so designated before the material is
21 disclosed or produced.

22 **Designation in conformity with this Order requires:**

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

1 portion(s) (e.g., by making appropriate markings in the margins).

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

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

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

23 5.3 Inadvertent Failures to Designate. If timely corrected, an
24 inadvertent failure to designate qualified information or items does not, standing
25 alone, waive the Designating Party’s right to secure protection under this Order for
26 such material. Upon timely correction of a designation, the Receiving Party must
27 make reasonable efforts to assure that the material is treated in accordance with the
28 provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge
3 a designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the
6 dispute resolution process under Local Rule 37-1 et seq.

7 6.3 Burden of Persuasion. The burden of persuasion in any such
8 challenge proceeding shall be on the Designating Party. Frivolous challenges, and
9 those made for an improper purpose (e.g., to harass or impose unnecessary
10 expenses and burdens on other parties) may expose the Challenging Party to
11 sanctions. Unless the Designating Party has waived or withdrawn the
12 confidentiality designation, all parties shall continue to afford the material in
13 question the level of protection to which it is entitled under the Producing Party’s
14 designation until the Court rules on the challenge.

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

16 7.1 Basic Principles. A Receiving Party may use Protected
17 Material that is disclosed or produced by another Party or by a Non-Party in
18 connection with this Action only for prosecuting, defending, or attempting to settle
19 this Action. Such Protected Material may be disclosed only to the categories of
20 persons and under the conditions described in this Order. When the Action has
21 been terminated, a Receiving Party must comply with the provisions of section 13
22 below (**FINAL DISPOSITION**).

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

26 7.2 Disclosure of “CONFIDENTIAL” Information or Items.
27 Unless otherwise ordered by the court or permitted in writing by the Designating
28 Party, a Receiving Party may disclose any information or item designated

1 “CONFIDENTIAL” only to:

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

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

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this Action and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the court and its personnel (but not through ECF or in any way that
11 would place the information into the public record);

12 (e) court reporters and their staff;

13 (f) professional jury or trial consultants, mock jurors, and Professional
14 Vendors to whom disclosure is reasonably necessary for this Action and who have
15 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

27 (i) any mediator or settlement officer, and their supporting personnel,
28 mutually agreed upon by any of the parties engaged in settlement discussions.

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

3 In the unlikely event that a Party is served with a subpoena or a court order
4 issued in other litigation that compels disclosure of any information or items
5 designated in this Action as “**CONFIDENTIAL**”, that Party must:

6 (a) promptly notify in writing all counsel for parties to this Action. Such
7 notification shall include a copy of the subpoena or court order;

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

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the Party or parties whose Protected Material may be affected
14 including, but not limited to, providing a fair and reasonable opportunity to contest
15 the disclosure of the **CONFIDENTIAL** information before it is disclosed in
16 response to a subpoena or a court order issued in other litigation.

17 If a Party timely seeks a protective order, the Party served with the subpoena
18 or court order shall not produce any information designated in this action as
19 “**CONFIDENTIAL**” before a determination by the court from which the subpoena
20 or order issued, unless the Party has obtained the permission of the Party or parties
21 whose Protected Material may be affected. The Party or parties moving for a
22 protective order shall either bear (if only one Party is moving for a protective order)
23 or equally share (if two or more parties are moving for a protective order) the
24 burden and expense of seeking protection of the confidential material and nothing
25 in these provisions should be construed as authorizing or encouraging a Party to
26 disobey a lawful directive from another court.

27 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
28 **PRODUCED IN THIS LITIGATION**

1 (a) The terms of this Order are applicable to information produced by a
2 Non-Party and designated as “**CONFIDENTIAL**”. Such information produced
3 by Non-Parties in connection with this litigation is protected by the remedies and
4 relief provided by this Order. Nothing in these provisions should be construed as
5 prohibiting a Non-Party from seeking additional protections.

6 (b) In the event that a Party is required, by a valid discovery request, to
7 produce a Non-Party’s confidential information in its possession, and the Party is
8 subject to an agreement with the Non-Party not to produce the Non-Party’s
9 confidential information, then the Party shall:

10 (1) promptly notify in writing the Requesting Party and the Non-
11 Party that some or all of the information requested is subject to a confidentiality
12 agreement with a Non-Party;

13 (2) promptly provide the Non-Party with a copy of the Stipulated
14 Protective Order in this Action, the relevant discovery request(s), and a reasonably
15 specific description of the information requested; and

16 (3) make the information requested available for inspection by the
17 Non-Party within 7 days, if requested.

18 (c) If the Non-Party fails to seek a protective order from this Court within
19 14 days of receiving the notice, the Receiving Party may produce the Non-Party’s
20 confidential information responsive to the discovery request. If the Non-Party
21 timely seeks a protective order, the Receiving Party shall not produce any
22 information in its possession or control that is subject to the confidentiality
23 agreement with the Non-Party before a determination by the court. Absent a court
24 order to the contrary, the Non-Party shall bear the burden and expense of seeking
25 protection in this court of its Protected Material.

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

27 If a Party learns that, by inadvertence or otherwise, it has disclosed or has
28 become aware that another Party has disclosed Protected Material to any person or

1 in any circumstance not authorized under this Stipulated Protective Order, the
2 Party must immediately (a) notify in writing the Party or parties whose Protected
3 Material may be affected by the disclosure(s), (b) use its best efforts to retrieve all
4 unauthorized copies of the Protected Material, (c) inform the person or persons to
5 whom unauthorized disclosures were made of all the terms of this Order, and (d)
6 request such person or persons to execute the “Acknowledgment and Agreement
7 to Be Bound” that is attached hereto as Exhibit A.

8 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
9 **OTHERWISE PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other
12 protection, the obligations of the Receiving Parties are those set forth in Federal
13 Rule of Civil Procedure 26(b)(5)(B).

14 **12. MISCELLANEOUS**

15 12.1 Right to Further Relief. Nothing in this Order limits the right
16 of any person or Party to seek the future modification of this Order by the Court.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of
18 this Protective Order no Party waives any right it otherwise would have to object
19 to disclosing or producing any information or item on any ground not addressed in
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on
21 any ground to use in evidence of any of the material covered by this Protective
22 Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal
24 any Protected Material must comply with Civil Local Rule 79-5. Protected
25 Material may only be filed under seal pursuant to a court order authorizing the
26 sealing of the specific Protected Material at issue. If a Party’s request to file
27 Protected Material under seal is denied by the court, then that Party must first
28 contact the Party or Parties whose Protected Material is implicated for a meet and

1 confer conference to discuss if redaction may resolve any issues regarding the
2 **CONFIDENTIAL** information without unduly impairing a Party's ability to
3 present evidence that has probative value in excess of its likely prejudicial effect.
4 If agreement is reached regarding the redaction, then the redacted documents may
5 be filed in the public record unless otherwise instructed by the Court. If agreement
6 cannot be reached on redaction, the Party or parties seeking to prevent the
7 disclosure of the **CONFIDENTIAL** information shall have one week to file a
8 request for a protective order and the **CONFIDENTIAL** information shall be kept
9 confidential until that motion is completely resolved.

10 **13. FINAL DISPOSITION**

11 After the Final Disposition of this Action, as defined in paragraph 4, within
12 60 days of a written request by the Designating Party, each Receiving Party must
13 return all Protected Material to the Producing Party or destroy such material. As
14 used in this subdivision, "all Protected Material" includes all copies, abstracts,
15 compilations, summaries, and any other format reproducing or capturing any of the
16 Protected Material. Whether the Protected Material is returned or destroyed, the
17 Receiving Party must submit a written certification to the Producing Party (and, if
18 not the same person or entity, to the Designating Party) by the 60 day deadline that
19 (1) identifies (by category, where appropriate) all the Protected Material that was
20 returned or destroyed and (2) affirms that the Receiving Party has not retained any
21 copies, abstracts, compilations, summaries or any other format reproducing or
22 capturing any of the Protected Material. Notwithstanding this provision, Counsel
23 are entitled to retain an archival copy of all pleadings, motion papers, trial,
24 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
25 and trial exhibits, expert reports, attorney work product, and consultant and expert
26 work product, even if such materials contain Protected Material. Any such archival
27 copies that contain or constitute Protected Material remain subject to this
28 Protective Order as set forth in Section 4 (**DURATION**).

1 **14. VIOLATIONS**

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

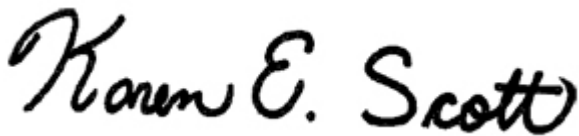
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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
7

8
9 Dated: March 18, 2016 By: /s/ Aaron D. Gopen
10 Printed Name: Aaron D. Gopen
11 Attorney For Plaintiff Justin A. Gopen

12
13 Dated: March 18, 2016 By: /s/ M. Christopher Hall
14 Printed Name: M. Christopher Hall
15 Attorney For Defendants

16
17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
18

19
20 DATED: March 22, 2016

21
22 
23

24 The Honorable Karen E. Scott
25 United States District/Magistrate Judge
26
27
28

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
attached Stipulated Protective Order that was issued by the United States District
Court for the Central District of California on _____ in the case
of Justin A. Gopen v. The Regents of the University of California, et al., Case
Number SACV15-02062 JVS (KESx). 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 both monetary and non-monetary
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 and State where sworn and signed: _____

Printed name: _____

Signature: _____