

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA –SOUTHERN DIVISION  
3

4 BANNER LIFE INSURANCE  
5 COMPANY, a corporation,

6 Plaintiff,

7 v.

8 STEVE BOBBY STEVENS, an  
9 individual,

10 Defendant

Case No. 8:17-cv-1417-CJC (KESx)

**ORDER RE:  
STIPULATED PROTECTIVE ORDER**

11  
12  
13 1. A. PURPOSES AND LIMITATIONS

14 Discovery in this action is likely to involve production of confidential,  
15 proprietary, or private information for which special protection from public  
16 disclosure and from use for any purpose other than prosecuting this litigation may be  
17 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter  
18 the following Stipulated Protective Order. The parties acknowledge that this Order  
19 does not confer blanket protections on all disclosures or responses to discovery and  
20 that the protection it affords from public disclosure and use extends only to the limited  
21 information or items that are entitled to confidential treatment under the applicable  
22 legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that  
23 this Stipulated Protective Order does not entitle them to file confidential information  
24 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
25 standards that will be applied when a party seeks permission from the court to file  
26 material under seal.  
27  
28

1  
2           B. GOOD CAUSE STATEMENT

3           This action is likely to involve customer or patient medical records and related  
4 documents that contain private, protected personal identifying information regarding the  
5 insured under the policy at issue (“Protected Medical Records”), the public disclosure of  
6 which is prohibited by law. It will also likely involve Plaintiff’s confidential and  
7 proprietary insurance underwriting and claims guidelines (“Underwriting/Claims  
8 Guidelines”), for which special protection from public disclosure and from use for  
9 any purpose other than prosecution of this action is warranted. Such documents and  
10 information are not generally available to the public, and may be privileged or otherwise  
11 protected from disclosure under state or federal statutes, court rules, case decisions, or  
12 common law.  
13

14           Accordingly, to expedite the flow of information, to facilitate the prompt  
15 resolution of disputes over confidentiality of discovery materials, to adequately protect  
16 information the parties are entitled to keep confidential, to ensure that the parties are  
17 permitted reasonable necessary uses of such material in preparation for and in the  
18 conduct of trial, to address their handling at the end of the litigation, and serve the ends  
19 of justice, a protective order for such information is justified in this matter. It is the  
20 intent of the parties that information will not be designated as confidential for tactical  
21 reasons and that nothing be so designated without a good faith belief that it has been  
22 maintained in a confidential, non-public manner, and there is good cause why it should  
23 not be part of the public record of this case.  
24  
25

26           2.     DEFINITIONS

27           2.1    Action: this pending federal law suit.  
28

1           2.2 Challenging Party: a Party or Non-Party that challenges the  
2 designation of information or items under this Order.  
3

4           2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
5 how it is generated, stored or maintained) or tangible things that qualify for  
6 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
7 the Good Cause Statement, and are limited to Protected Medical Records and/or  
8 Underwriting/Claims Guidelines.  
9

10          2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
11 their support staff).

12          2.5 Designating Party: a Party or Non-Party that designates information or  
13 items that it produces in disclosures or in responses to discovery as  
14 “CONFIDENTIAL.”  
15

16          2.6 Disclosure or Discovery Material: all items or information, regardless of  
17 the medium or manner in which it is generated, stored, or maintained (including,  
18 among other things, testimony, transcripts, and tangible things), that are produced or  
19 generated in disclosures or responses to discovery in this matter.  
20

21          2.7 Expert: a person with specialized knowledge or experience in a matter  
22 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
23 an expert witness or as a consultant in this Action.

24          2.8 House Counsel: attorneys who are employees of a party to this Action.  
25 House Counsel does not include Outside Counsel of Record or any other outside  
26 counsel.  
27

28          2.9 Non-Party: any natural person, partnership, corporation, association, or  
other legal entity not named as a Party to this action.

1  
2 2.10 Outside Counsel: attorneys who are not employees of a party to this  
3 Action but are retained to represent or advise a party to this Action and have appeared  
4 in this Action on behalf of that party or are affiliated with or consulted by a law firm  
5 which has appeared on behalf of that party, and includes support staff.

6 2.11 Party: any party 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  
10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this Action, limited to Protected Medical Records and/or  
12 Underwriting/Claims Guidelines.

13 2.13 Professional Vendors: persons or entities that provide litigation support  
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
16 and their employees and subcontractors.

17  
18 2.14 Protected Material: any Disclosure or Discovery Material that is  
19 designated as “CONFIDENTIAL,” provided that it is limited to Protected Medical  
20 Records and/or Underwriting/Claims Guidelines.

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
22 from a Producing Party.

23  
24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only Protected  
26 Material (as defined above), but also (1) any information copied or extracted from  
27 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
28 Material; and (3) any testimony, conversations, or presentations by Parties or their

1 Counsel that might reveal Protected Material.

2  
3 Any use of Protected Material at trial shall be governed by the orders of the  
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations  
7 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
8 in writing or a court order otherwise directs. Final disposition shall be deemed to be  
9 the later of (1) dismissal of all claims and defenses in this Action, with or without  
10 prejudice; and (2) final judgment herein after the completion and exhaustion of all  
11 appeals, rehearings, remands, trials, or reviews of this Action, including the time  
12 limits for filing any motions or applications for extension of time pursuant to applicable  
13 law.  
14

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
17 Party or Non-Party that designates information or items for protection under this  
18 Order must take care to limit any such designation to specific material that qualifies  
19 under the appropriate standards, and is limited to Protected Medical Records and/or  
20 Underwriting/Claims Guidelines. The Designating Party must designate for protection  
21 only those parts of material, documents, items, or oral or written  
22 communications that qualify so that other portions of the material, documents,  
23 items, or communications for which protection is not warranted are not swept  
24 unjustifiably within the ambit of this Order.  
25  
26

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
28 are shown to be clearly unjustified or that have been made for an improper purpose

1 (e.g., to unnecessarily encumber the case development process or to impose unnecessary  
2 expenses and burdens on other parties) may expose the Designating Party to  
3 sanctions.  
4

5 If it comes to a Designating Party's attention that information or items that it  
6 designated for protection do not qualify for protection, that Designating Party must  
7 promptly notify all other Parties that it is withdrawing the inapplicable designation.  
8

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
10 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
11 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
12 under this Order must be clearly so designated before the material is disclosed or  
13 produced.  
14

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic  
17 documents, but excluding transcripts of depositions or other pretrial or trial  
18 proceedings), that the Producing Party affix at a minimum, the legend  
19 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains  
20 protected material. If only a portion or portions of the material on a page qualifies for  
21 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
22 by making appropriate markings in the margins).  
23

24 A Party or Non-Party that makes original documents available for inspection  
25 need not designate them for protection until after the inspecting Party has indicated  
26 which documents it would like copied and produced. During the inspection and  
27 before the designation, all of the material made available for inspection shall be  
28 deemed "CONFIDENTIAL." After the inspecting Party has identified the

1 documents it wants copied and produced, the Producing Party must determine which  
2 documents, or portions thereof, qualify for protection under this Order. Then, before  
3 producing the specified documents, the Producing Party must affix the  
4 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
5 portion or portions of the material on a page qualifies for protection, the Producing  
6 Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
7 markings in the margins).  
8

9  
10 (b) for testimony given in depositions that the Designating Party identify  
11 the Disclosure or Discovery Material on the record, before the close of the deposition  
12 all protected testimony.

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

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
21 to designate qualified information or items does not, standing alone, waive the  
22 Designating Party’s right to secure protection under this Order for such material. Upon  
23 timely correction of a designation, the Receiving Party must make reasonable efforts to  
24 assure that the material is treated in accordance with the provisions of this  
25 Order.  
26

27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation

1 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

2  
3 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
4 resolution process under Local Rule 37.1 et seq.

5 6.3 The burden of persuasion in any such challenge proceeding shall be on the  
6 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,  
7 to harass or impose unnecessary expenses and burdens on other parties) may expose  
8 the Challenging Party to sanctions. Unless the Designating Party has waived or  
9 withdrawn the confidentiality designation, all parties shall continue to afford the  
10 material in question the level of protection to which it is entitled under the  
11 Producing Party’s designation until the Court rules on the  
12 challenge.  
13

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
16 disclosed or produced by another Party or by a Non-Party in connection with this  
17 Action only for prosecuting, defending, or attempting to settle this Action. Such  
18 Protected Material may be disclosed only to the categories of persons and under the  
19 conditions described in this Order. When the Action has been terminated, a Receiving  
20 Party must comply with the provisions of section 13 below (FINAL  
21 DISPOSITION).  
22

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

27 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated  
2 “CONFIDENTIAL” only to:  
3

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

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

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

13 (d) the court and its personnel;

14 (e) court reporters and their staff;

15 (f) professional jury or trial consultants, mock jurors, and Professional  
16 Vendors to whom disclosure is reasonably necessary for this Action and who have  
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
18

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

21 (h) during their depositions, witnesses ,and attorneys for witnesses, in the  
22 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
23 requests that the witness sign the form attached as Exhibit 1 hereto, unless the witness  
24 is an officer, director, or employee of any Party, in which event no request or signature  
25 is required; and (2) they will not be permitted to keep any confidential information  
26 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
27 unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
28

1 transcribed deposition testimony or exhibits to depositions that reveal Protected  
2 Material may be separately bound by the court reporter and may not be disclosed to  
3 anyone except as permitted under this Stipulated Protective Order; and  
4

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

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
8 OTHER LITIGATION  
9

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

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

15 (b) promptly notify in writing the party who caused the subpoena or order  
16 to issue in the other litigation that some or all of the material covered by the  
17 subpoena or order is subject to this Protective Order. Such notification shall include a  
18 copy of this Stipulated Protective Order; and  
19

20 (c) cooperate with respect to all reasonable procedures sought to be  
21 pursued by the Designating Party whose Protected Material may be affected.  
22

23 If the Designating Party timely seeks a protective order, the Party served with the  
24 subpoena or court order shall not produce any information designated in this action  
25 as “CONFIDENTIAL” before a determination by the court from which the subpoena  
26 or order issued, unless the Party has obtained the Designating Party’s permission.  
27 The Designating Party shall bear the burden and expense of seeking protection in  
28 that court of its confidential material and nothing in these provisions should be

1 construed as authorizing or encouraging a Receiving Party in this Action to disobey a  
2 lawful directive from another court.  
3

4 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE  
5 PRODUCED IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a  
7 Non-Party in this Action and designated as "CONFIDENTIAL," provided that it is  
8 limited to Protected Medical Records and/or Underwriting/Claims Guidelines. Such  
9 information produced by Non-Parties in connection with this litigation is protected by  
10 the remedies and relief provided by this Order. Nothing in these provisions should be  
11 construed as prohibiting a Non-Party from seeking additional protections.  
12

13 (b) In the event that a Party is required, by a valid discovery request, to  
14 produce a Non-Party's confidential information in its possession, and the Party is  
15 subject to an agreement executed prior to the discovery request with the Non-Party  
16 not to produce the Non-Party's confidential information, then the Party shall:  
17

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

25 3. make the information requested available for inspection by the  
26 Non-Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this court within 14  
28 days of receiving the notice and accompanying information, the Receiving Party may

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

8  
9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

18  
19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
20 PROTECTED MATERIAL

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

1 information covered by the attorney-client privilege or work product protection, the  
2 parties may incorporate their agreement in the stipulated protective order submitted  
3 to the court.  
4

5 12. MISCELLANEOUS

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
7 person to seek its modification by the Court in the future.  
8

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order no Party waives any right it otherwise would have to object to  
11 disclosing or producing any information or item on any ground not addressed in this  
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
13 ground to use in evidence of any of the material covered by this Protective Order.  
14

15 12.3 Filing Protected Material. A Party that seeks to file under seal any  
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
17 only be filed under seal pursuant to a court order authorizing the sealing of the  
18 specific Protected Material at issue. If a Party's request to file Protected Material  
19 under seal is denied by the court, then the Receiving Party may file the information  
20 in the public record unless otherwise instructed by the court.  
21

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60  
24 days of a written request by the Designating Party, each Receiving Party must return all  
25 Protected Material to the Producing Party or destroy such material. As used in this  
26 subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
27 summaries, and any other format reproducing or capturing any of the Protected  
28 Material. Whether the Protected Material is returned or destroyed, the Receiving

1 Party must submit a written certification to the Producing Party (and, if not the same  
2 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
3 category, where appropriate) all the Protected Material that was returned or  
4 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,  
5 compilations, summaries or any other format reproducing or capturing any of the  
6 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an  
7 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
8 legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
9 attorney work product, and consultant and expert work product, even if such materials  
10 contain Protected Material. Any such archival copies that contain or constitute Protected  
11 Material remain subject to this Protective Order as set forth in Section 4 (DURATION).  
12

13  
14 14. Any violation of this Order may be punished by any and all appropriate  
15 measures including, without limitation, contempt proceedings and/or monetary  
16 sanctions.  
17

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19 <u>/s/ Jodi K. Swick</u>	<u>10/25/2017</u>
20 Attorneys for Plaintiff	Date
21 <u>Burton Mark Senkoff</u>	<u>October 24, 2017</u>
22 Attorneys for Defendant	Date

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

24  
25  
26 Dated: 10/30/2017

Karen E. Scott  
Hon. Karen E. Scott  
United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare  
6 under penalty of perjury that I have read in its entirety and understand the Stipulated  
7 Protective Order that was issued by the United States District Court for the Central  
8 District of California on [date] in the case of *Banner Life Insurance Company v. Steve*  
9 *Bobby Stevens*, Case No. 8:17-cv-01417-CJC-KES. I agree to comply with and to be  
10 bound by all the terms of this Stipulated Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and punishment in  
12 the nature of contempt. I solemnly promise that I will not disclose in any manner any  
13 information or item that is subject to this Stipulated Protective Order to any person  
14 or entity except in strict compliance with the provisions of this Order.

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

24 Date: \_\_\_\_\_

25  
26 City and State where sworn and signed: \_\_\_\_\_

27 Printed name: \_\_\_\_\_

28 Signature: \_\_\_\_\_