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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **AT FRESNO**

11 GUY BAUDOUX, an individual,)
MARSHALL S. FLAM, M.D., an) Case No. 10-CV-01950-OWW-DLB
12 individual and SHELAGH WEBSTER, an)
individual.)

13)
14 Plaintiffs,)

15 vs.)

16 CALIFORNIA PHYSICIANS' SERVICE,)
17 a non-profit corporation, dba BLUE)
SHIELD OF CALIFORNIA)
18)
19 Defendant.)

20 **STIPULATION TO STAY LITIGATION**
21 **AND**
22 **REFER MATTER TO**
23 **BINDING ARBITRATION;**
24 **ORDER THEREON**

25 RECITALS

26 A. WHEREAS, the above-captioned Plaintiffs (hereinafter "*Plaintiffs*") recently filed
27 suit in the United States District Court for the Eastern District of California at Fresno against
28 Defendant (hereinafter "*Blue Shield*");

29 B. WHEREAS, Plaintiffs and Defendant are attempting to settle the matters described
30 in the lawsuit; and the Parties believe settlement is likely, and that if the case cannot be settled it
31 should be resolved by binding Arbitration;

32 C. WHEREAS, if the Parties do not soon settle this matter through informal
33 settlement discussion, the Parties would like to have the entire lawsuit remanded for binding

1 Arbitration before one (1) retired-judge Arbitrator to be selected by the Parties from a seven (7)
2 judge panel to be distributed by JAMS;

3 D. WHEREAS, the Parties anticipate that a binding Arbitration of this matter can be
4 conducted in Fresno before a JAMS Arbitrator in probably less than one day;

5 E. WHEREAS, the principal claim is less than \$79,000.00; and the Parties hope to
6 resolve their dispute in the most efficient and cost-effective manner possible;

7 F. WHEREAS, Plaintiff Marshall Flam, M.D. (doing business as Hematology-
8 Oncology Medical group of Fresno) has a contract with Blue Shield governing, among other
9 things, the manner of payment for services rendered by Dr. Flam to Blue Shield members, and
10 also contends that he is the assignee of all claims formerly held by Plaintiff Guy Baudoux and
11 Shelagh Webster, who are now deceased (Blue Shield does not concede the validity of any such
12 assignment, and reserves the right to contest that issue); and WHEREAS, the Parties have agreed
13 by this Stipulation that Plaintiff Baudoux and Plaintiff Webster are now dismissed as Plaintiffs
14 without prejudice, and that if their executors/estates wish to reappear they may file their FRCP
15 25(a) motion for substitution within 30 days after the selection of the JAMS Arbitrator; and,
16 WHEREAS, in light of the aforementioned dismissal without prejudice of Plaintiffs Baudoux and
17 Webster, their non-assigned tort causes of action numbers 12 through 22 are likewise dismissed
18 without prejudice;

19 G. WHEREAS, the Federal Arbitration Act (9 USC §1, et seq.) allows the Parties to
20 stipulate to refer the instant litigation (together with any and all related disputes to the claims set
21 forth in the lawsuit) to binding Arbitration before one (1) JAMS qualified retired-judge
22 Arbitrator;

23 STIPULATIONS

24 NOW THEREFORE, the Parties hereby stipulate and agree that the Court should issue
25 (pursuant to the Court's inherent authority and the Federal Arbitration Act) the following
26 ORDER:

- 27 1. The aforementioned Recitals are adopted and approved.
28

1 2. All Parties agree to engage in final and binding Arbitration before one retired-
2 judge JAMS Arbitrator for the resolution of any and all disputes involved or related to, or arising
3 from the above-captioned litigation. The Arbitration Hearing shall be conducted by the Arbitrator
4 within the City of Fresno at a place to be determined by the Arbitrator upon consultation with the
5 Parties. The “*JAMS Streamlined Arbitration Rules and Procedures*” (the “JAMS Rules”) shall
6 govern the pre-arbitration proceedings and the Arbitration hearing itself. However, it is agreed
7 that the depositions of Blue Shield’s expert witness(es) and the deposition(s) of Plaintiff’s expert
8 witness(es) (including Dr. Flam) may be taken, if a party to desires. The Arbitration hearing shall
9 occur within 180 days of the Court’s approval of this Stipulation, unless the Parties stipulate to a
10 later date (with this Court’s approval).

11 3. The Arbitrator shall, after the Arbitration Hearing, issue a final and binding written
12 decision, within sixty (60) days of (i) the conclusion of the arbitration hearing or (ii) the
13 submission of all post-hearing briefs (if any); unless the Parties stipulate to allow the Arbitrator
14 more time. When the arbitration award becomes final (as defined by the JAMS Rules), the
15 Parties shall file the Arbitrator’s written decision with this Court. Thereafter, enforcement,
16 modification and/or correction of the Arbitrator’s decision shall be pursuant to the Federal
17 Arbitration Act. The Arbitrator’s decision shall be in writing (setting forth his findings of fact
18 and his conclusions of law), and the Arbitrator shall apply and follow any and all applicable
19 California and Federal Law.

20 4. Therefore, any and all disputes between the Parties shall now be referred to
21 binding Arbitration as provided above.

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