

1 STEPHENSON, ACQUISTO & COLMAN
JOY Y. STEPHENSON, ESQ. (SBN 113755)
2 BARRY SULLIVAN, ESQ. (SBN 136571)
RICHARD A. LOVICH, ESQ. (SBN 113472)
3 JENNIFER JIAO, ESQ. (SBN 292205)
jjiao@sacfirm.com
4 303 N. Glenoaks Blvd., Suite 700
5 Burbank, CA 91502
Telephone: (818) 559-4477
6 Facsimile: (818) 559-5484

7 Attorneys for Plaintiff
8 COUNTY OF KERN, initially filed as KERN COUNTY HOSPITAL AUTHORITY
dba KERN MEDICAL CENTER

9 COLE PEDROZA LLP
KENNETH R. PEDROZA (SBN 184906)
10 JOSHUA C. TRAVER (SBN 229778)
jtraver@coledroza.com
11 2670 Mission Street, Suite 200
12 San Marino, CA 91108
Tel.: (626) 431-2787
13 Fax: (626) 431-2788

14 Attorneys for Defendants,
15 CIGNA HEALTH AND LIFE INSURANCE COMPANY
and CIGNA HEALTHCARE OF CALIFORNIA, INC.

16 **UNITED STATES DISTRICT COURT**

17
18 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

19 COUNTY OF KERN (initially filed as
20 KERN COUNTY HOSPITAL
21 AUTHORITY, a California special
health authority, dba KERN
22 MEDICAL CENTER)

23 Plaintiff,

24 vs.

25 CIGNA HEALTHCARE OF
26 CALIFORNIA, INC., et al.

27 Defendants.
28

Case No. 1:16-CV-00432-DAD-JLT

**[PROPOSED] STIPULATED
PROTECTIVE ORDER AS
AMENDED BY THE COURT**

(Doc. 19)

1 **I. PURPOSE**

2 To expedite the flow of discovery materials, to facilitate the prompt resolution
3 of disputes over confidentiality of discovery materials, to adequately protect the
4 information the parties are entitled or obligated to keep confidential, to ensure that
5 only materials the parties are entitled or obligated to keep confidential are subject to
6 such treatment, and to ensure that the parties are permitted reasonably necessary uses
7 of such materials in preparation for and in the conduct of trial pursuant to Fed. R. Civ.
8 P. 26(c), the parties hereby stipulate to and petition the court to enter the following
9 Protective Order.

10
11 **II. DEFINITIONS**

12 2.1 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things which contain trade
14 secrets or other confidential research, development, technical, financial, or
15 commercial information, or protected health information (as that term is defined by 45
16 C.F.R. 160.103), whether embodied in physical objects, documents, or the factual
17 knowledge of persons; and that has been so designated by the producing party, unless
18 a Court declares such information to not properly meet said descriptions.

19 2.2 “Counsel” or “Attorney”: Outside Counsel of Record and the
20 Party’s in-house counsel.

21 2.3 “Disclosure or Discovery Material”: All items or information,
22 regardless of the medium or manner in which it is generated, stored, or maintained
23 (including, among other things, testimony, transcripts, and tangible things), that are
24 produced or generated in disclosures or responses to discovery in this matter.

25 2.4 “Expert”: A person with specialized knowledge or experience in a
26 matter pertinent to the litigation who (1) has been retained by a Party or its counsel to
27 serve as an expert witness or as a consultant in this action, (2) is not a past or current
28

1 employee or a Party or of a Party's competitor, and (3) at the time of retention, is not
2 anticipated to become an employee of a Party or a Party's competitor.

3 2.5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
4 Information or Items: Extremely sensitive "Confidential Information or Items,"
5 disclosure of which to another Party or Non-Party would create a substantial risk of
6 serious harm that could not be avoided by less restrictive means.

7 2.6 "Non-Party": any natural person, partnership, corporation,
8 associations, or other legal entity not named as a party in this action.

9 2.7 "Outside Counsel of Record": Attorneys who are not employees of a
10 party to this action but are retained to represent or advise a party to this action and
11 have appeared in this action on behalf of that party or are affiliated with a law firm
12 which has appeared on behalf of that party.

13 2.8 "Party": Any party to this action, including all of its officers,
14 directors, employees, consultants, retained experts, and Outside Counsel of Record
15 (and their support staffs).

16 2.9 "Professional Vendors": Persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.10 "Protected Material": Any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –
22 ATTORNEYS' EYES ONLY."

23 **III. DESIGNATION OF PROTECTED INFORMATION**

24 3.1 Exercise of Restraint and Care in Designating Material for Protection.
25 Each Party or Non-Party that designates information or items for protection under this
26 Order must take care to limit any such designation to specific material that qualifies
27 under the appropriate standards. To the extent it is practical to do so, a producing
28 Party must designate for protection only those parts of material, documents, items or

1 communications that qualify – so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order. Nothing in this Order shall prevent a
4 receiving Party from contending that any or all documents or information designated
5 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
6 ONLY” is not entitled to such designation.

7 If it comes to a producing Party’s attention that information or items that it
8 designated for protection do not qualify for protection at all or do not qualify for the
9 level of protection initially asserted, that Party must promptly notify all other parties
10 that it is withdrawing the mistaken designation.

11 3.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the producing Party affix the legend “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that
21 contains protected material. If only a portion or portions of the material on a page
22 qualifies for protection, the producing Party also must clearly identify the protected
23 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
24 each portion, the level of protection being asserted.

25 (b) for testimony given in deposition or in other pretrial or trial proceedings,
26 that the designating Party identify on the record, before the close of the deposition,
27 hearing, or other proceeding, all protected testimony and specify the level of
28 protection being asserted. When it is impractical to identify separately each portion of

1 testimony that is entitled to protection and it appears that substantial portions of the
2 testimony may qualify for protection, the designating Party may invoke on the record
3 (before the deposition, hearing, or other proceeding is concluded) a right to have up to
4 30 days to identify the specific portions of the testimony as to which protection is
5 sought and to specify the level of protection being asserted. Only those portions of the
6 testimony that are appropriately designated for protection within the 30 days shall be
7 covered by the provisions of this Protective Order. Alternatively, a designating Party
8 may specify, at the deposition or up to 30 days afterwards if that period is properly
9 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 Parties shall give the other parties notice if they reasonably expect a deposition,
12 hearing or other proceeding to include Protected Material so that the other parties can
13 ensure that only authorized individuals who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
15 document as an exhibit at a deposition shall not in any way affect its designation as
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
17 ONLY.”

18 Transcripts containing Protected Material shall have an obvious legend on the
19 title page that the transcript contains Protected Material, and the title page shall be
20 followed by a list of all pages (including line numbers as appropriate) that have been
21 designated as Protected Material and the level of protection being asserted by the
22 designating Party. The designating Party shall inform the court reporter of these
23 requirements. Any transcript that is prepared before the expiration of a 21-day period
24 for designation shall be treated during that period as if it had been designated
25 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
26 otherwise agreed. After the expiration of that period, the transcript shall be treated
27 only as actually designated.

28 (c) for information produced in some form other than documentary and for

1 any other tangible items, that the producing Party affix in a prominent place on the
2 exterior of the container or containers in which the information or item is stored the
3 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY”. If only a portion or portions of the information or item warrant protection,
5 the producing Party, to the extent practicable, shall identify the protected portion(s)
6 and specify the level of protection being asserted.

7 3.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive the
9 designating Party’s right to secure protection under this Order for such material. Upon
10 timely correction of a designation, the receiving Party must make reasonable efforts to
11 assure that the material is treated in accordance with the provisions of this Order.

12 **IV. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 4.1 Basic Principles: A Party may use Protected Materials that is disclosed
14 or produced by another Party or Non-Party in connection with this case only for
15 prosecuting, defending or attempting to settle this litigation. Such Protected Material
16 may be disclosed only to the categories of persons and under the conditions described
17 in this Order. When the litigation has been terminated, the Parties must comply with
18 the provisions of section 8 below (Final Disposition).

19 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
20 otherwise ordered by court or permitted in writing by the designating Party, a
21 receiving Party may disclose any information or item designated “CONFIDENTIAL”
22 only to:

23 (a) the receiving Party’s Counsel, Outside Counsel of Record in this action,
24 and the Party’s in-house counsel;

25 (b) employees of said Outside Counsel of Record, or the Party’s in-house
26 counsel staff to whom it is reasonably necessary to disclose the information for this
27 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
28 that is attached hereto as Exhibit A;

1 (c) the officers, directors, and employees of the receiving Party (other than
2 in-house counsel) to whom disclosure is reasonably necessary for this litigation and
3 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) Experts (as defined in this Order) of the receiving Party to whom
5 disclosure is reasonably necessary for this litigation and who have signed the
6 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (e) the Court and its personnel;

8 (f) court reporters and their staff, professional jury or trial consultants, and
9 Professional Vendors to whom disclosure is reasonably necessary for this litigation
10 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
11 A);

12 (g) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the “Acknowledgment and Agreement to
14 Be Bound” (Exhibit A), unless otherwise agreed by the designating Party or ordered
15 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
16 reveal Protected Material may not be disclosed to anyone except as permitted under
17 this Stipulated Protective Order.

18 (h) the author or recipient of a document containing the information or a
19 custodian or other person who otherwise possessed or knew the information.

20 4.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
22 writing by the designating Party, a receiving Party may disclose any information or
23 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
24 to:

25 (a) the receiving Party’s Counsel, Outside Counsel of Record in this action,
26 or the Party’s in-house counsel;

27 (b) employees of said Outside Counsel of Record, or the Party’s in-house
28 counsel staff to whom it is reasonably necessary to disclose the information for this

1 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A);

3 (c) Experts of the receiving Party (1) to whom disclosure is reasonably
4 necessary for this litigation, and (2) who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff and Professional Vendors to whom
8 disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

10 (f) during their depositions, witnesses in the action who (i) are employed by
11 or affiliated with the Party that produced the subject “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY” Information or Items, (ii) to whom disclosure is
13 reasonably necessary and (iii) who have signed the “Acknowledgment and Agreement
14 to Be Bound” (Exhibit A), unless otherwise agreed by the designating Party or ordered
15 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
16 reveal Protected Material may not be disclosed to anyone except as permitted under
17 this Stipulated Protective Order.

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

20 **V. CHALLENGES TO PROTECTED INFORMATION DESIGNATIONS**

21 5.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time. Unless a prompt challenge to a designating
23 Party’s confidentiality designation is necessary to avoid foreseeable, substantial
24 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
25 litigation, a Party does not waive its right to challenge a confidentiality designation by
26 electing not to mount a challenge promptly after the original designation is disclosed.

27 5.2 Meet and Confer. The challenging Party shall initiate the dispute
28 resolution process by providing written notice of each designation it is challenging

1 and describing the basis for each challenge. To avoid ambiguity as to whether a
2 challenge has been made, the written notice must recite that the challenge to
3 confidentiality is being made in accordance with this specific paragraph of the
4 Protective Order. The Parties shall attempt to resolve each challenge in good faith and
5 must begin the process by conferring directly within 14 days of the date of service of
6 notice. In conferring, the challenging Party must explain the basis for its belief that the
7 confidentiality designation was not proper and must give the designating Party an
8 opportunity to review the designated material, to reconsider the circumstances, and, if
9 no change in designation is offered, to explain the basis for the chosen designation. A
10 challenging Party may proceed to the next stage of the challenge process only if it has
11 engaged in this meet and confer process first or establishes that the designating Party
12 is unwilling to participate in the meet and confer process in a timely manner.

13 5.3 Judicial Intervention. If the Parties cannot resolve a challenge without
14 court intervention, the designating Party shall file and serve a motion to retain
15 confidentiality in compliance with within 21 days of the initial notice of challenge or
16 within 14 days of the parties agreeing that the meet and confer process will not resolve
17 their dispute, whichever is earlier. Before filing the motion, the party SHALL first
18 comply with the procedures set forth in the scheduling order (Doc. 18 at 4, Headnote
19 VI). If the Court authorizes the filing of the discovery motion, it SHALL comply with
20 Local Rule 281(c). Each such motion must be accompanied by a competent
21 declaration affirming that the movant has complied with the meet and confer
22 requirements imposed in the preceding paragraph. Failure by the designating Party to
23 make such a motion including the required declaration within 21 days (or 14 days, if
24 applicable) shall automatically waive the confidentiality designation for each
25 challenged designation. In addition, the challenging Party may file a motion
26 challenging a confidentiality designation at any time if there is good cause for doing
27 so, including a challenge to the designation of a deposition transcript or any portions
28 thereof. Any motion brought pursuant to this provision must be accompanied by a

1 competent declaration affirming that the movant has complied with the meet and
2 confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 designating Party.

5 Unless the designating Party has waived the confidentiality designation by
6 failing to file a motion to retain confidentiality as described above, all parties shall
7 continue to afford the material in question the level of protection to which it is entitled
8 under the producing Party's designation until the court rules on the challenge.

9 **VI. SCOPE**

10 The protections conferred by this Protective Order cover not only Protected
11 Material, but also (1) any information copied or extracted from Protected Material; (2)
12 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
13 testimony, conversations, or presentations by Parties or their Counsel that might
14 reveal Protected Material. However, the protections conferred by this Protective
15 Order do not cover the following information: (a) any information that is in the public
16 domain at the time of disclosure or becomes part of the public domain after its
17 disclosure to a receiving Party as a result of publication not involving a violation of
18 this Order, including becoming part of the public record through trial or otherwise;
19 and (b) any information known to the receiving Party prior to the disclosure or
20 obtained by the receiving Party after the disclosure from a source who obtained the
21 information lawfully and under no obligation of confidentiality to the designating
22 Party. Any use of Protected Material at trial shall be governed by a separate
23 agreement or order.

24 25 **VII. MISCELLANEOUS PROVISIONS**

26 7.1 Right to Further Relief. Nothing in this Order abridges the right of any
27 person to seek its modification by the court in the future.

28 7.2 Right to Assert Other Objections. By stipulating to the entry of this

1 Protective Order no Party waives any right it otherwise would have to object to
2 disclosing or producing any information or item on any ground not addressed in this
3 Stipulated Protective Order. Similarly, no Party waives any right to object on any
4 ground to use in evidence of any of the material covered by this Protective Order.

5 7.3 Filing Protected Material. Without written permission from the
6 designating Party or a court order secured after appropriate notice to all interested
7 persons, a Party may not file in the public record in this action any Protected Material.
8 A Party that seeks to file under seal any Protected Material must comply with Civil
9 Local Rule 141. Protected Material may only be filed under seal pursuant to a court
10 order authorizing the sealing of the specific Protected Material at issue.

11 7.4 Retroactive Application. The provisions of this Protective Order shall
12 apply retroactively to all documents and information previously exchanged by parties
13 to this action. To the extent not already designated as Confidential, the producing
14 party can designate any and all documents produced and/or provided as Confidential
15 or Confidential Health Information within thirty (30) days of the execution of this
16 Stipulated Protective Order.

17 7.5 Duration. Even after final disposition of this litigation, the
18 confidentiality obligations imposed by this Order shall remain in effect until a
19 designating Party agrees otherwise in writing or a court order otherwise directs. Final
20 disposition shall be deemed to be the later of (1) dismissal of all claims and defenses
21 in this action, with or without prejudice; and (2) final judgment herein after the
22 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
23 this action, including the time limits for filing any motions or applications for
24 extension of time pursuant to applicable law.

25 **VIII. FINAL DISPOSITION**

26 Within 60 days after the entry of a final non-appealable judgment or order, or
27 the complete settlement of all claims asserted between the parties in this action, each
28 party shall, at its option, either return to the producing party or destroy all physical

1 objects and documents which embody PROTECTED INFORMATION; provided that
2 all PROTECTED INFORMATION, not embodied in physical objects and documents,
3 shall remain subject to this Order. Notwithstanding the foregoing, Counsel shall be
4 entitled to maintain an archival copy of all pleadings, motions, and trial briefs
5 (including all supporting and opposing papers thereto), written discovery requests and
6 responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial
7 transcripts, and exhibits offered or introduced into evidence at trial.

8
9 **ORDER**

10 Upon the stipulation of the parties, the Court **GRANTS** the stipulated
11 protective order, **as modified by the Court in ¶ 5.3.**

12 IT IS SO ORDERED.

13 Dated: June 30, 2016

14 /s/ Jennifer L. Thurston
15 UNITED STATES MAGISTRATE JUDGE

1 **ATTACHMENT A**

2 **Confidentiality Agreement**

3
4 I, _____, state:

- 5 1. I have read the Stipulated Protective Order dated _____ .
- 6 2. I am fully familiar with and agree to comply with and be bound by the
7 provisions of said Order. I understand that I am to retain all material designated as
8 “CONFIDENTIAL” of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
9 ONLY” in a secure manner, and that all copies are to remain in my personal
10 custody until I have completed my assigned duties, whereupon the copies and any
11 writings prepared by me containing PROTECTED INFORMATION are to be
12 returned to counsel who provided me with such material.
- 13 3. I will not divulge to persons other than those specifically authorized by said
14 Order, and will not copy or use, any information obtained pursuant to said Order
15 except solely for purposes of this action, except as provided in said Order. I also
16 agree to notify any stenographic or clerical personnel who are required to assist me
17 of the terms of said Order.
- 18 4. I hereby consent to personal jurisdiction and venue in the United States District
19 Court for the Eastern District of California for the purposes of enforcing said
20 Order.
- 21 5. I state under penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct.

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24 Executed on _____, 201_.

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