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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SAN JOAQUIN VALLEY  
INSURANCE AUTHORITY, a joint  
powers authority,

Plaintiff,

v.

GALLAGHER BENEFIT  
SERVICES, INC., a Delaware  
corporation; and Does 1 through 20,  
inclusive,

Defendants.

Case No. 1:17-cv-00861-LJO-EPG

Judge: Hon. Erica P. Grosjean,  
U.S. Magistrate Judge

**STIPULATED QUALIFIED  
PROTECTIVE ORDER**

1                                    **STIPULATED QUALIFIED PROTECTIVE ORDER**

2            WHEREAS, in the above-captioned case, San Joaquin Valley Insurance  
3 Authority v. Gallagher Benefit Services Inc., U.S.D.C. (E.D. Cal.) No. 1:17-cv-  
4 00861-LJO-EPG (the “Action”), Plaintiff San Joaquin Valley Insurance Authority,  
5 and Defendant Gallagher Benefit Services Inc. and Does 1 through 20 (each a  
6 “Party, and collectively, the “Parties”) seek to facilitate the exchange of  
7 Confidential Information, as defined below, including, but not limited to  
8 information defined by the regulations promulgated under the Federal Health  
9 Insurance Portability and Accountability Act of 1996 (HIPAA).

10            NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by  
11 and between the Parties by and through their respective counsel of record, that they  
12 jointly request, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and  
13 45 C.F.R. Section 164.512(e)(1)(ii)(B), that the Court enter this Stipulated  
14 Qualified Protective Order (“Protective Order”) as an Order of the Court, as  
15 follows:

16            1.     The Parties are hereby authorized to use or disclose “Protected Health  
17 Information” as necessary for purposes of the above-captioned litigation, including  
18 any appeals thereof. Such purposes may include:

19                    (a)    Responding to valid interrogatories seeking “Protected Health  
20 Information,” served pursuant to the Federal Rules of Civil Procedure in the  
21 Action;

22                    (b)    Responding to valid requests for production seeking “Protected  
23 Health Information,” served pursuant to the Federal Rules of Civil Procedure in the  
24 Action;

25                    (c)    Responding to valid and timely subpoenas for records seeking  
26 “Protected Health Information,” pursuant to the Federal Rules of Civil Procedure in  
27 the Action ;

28                    (d)    Responding to each of a Party’s own experts who request, either

1 orally or in writing, “Protected Health Information,” for the purposes of reviewing  
2 materials related to the instant litigation, regardless of whether the expert is a  
3 consulting or trial expert or is considered retained for compensation, by disclosing  
4 and providing such requested “Protected Health Information;”

5 (e) Responding to deposition questions or a valid and timely  
6 subpoena duces tecum at a duly-noticed deposition in the Action;

7 (f) Appearing as witnesses for any judicial proceeding related to the  
8 Action; and

9 (g) Otherwise complying with their discovery and disclosure  
10 obligations under the Federal Rules of Civil Procedure, including Rule 26 of the  
11 Federal Rules of Civil Procedure.

12 Further, covered entities who are non-parties to the Action are authorized to use and  
13 disclose “Protected Health Information” for the purposes set forth above to the  
14 extent and subject to the conditions outlined herein.

15 2. This Protective Order does not function to waive any right to the  
16 prepayment of costs or any other appropriate objection or privilege that may be  
17 timely asserted in this litigation by either Party.

18 3. For the purposes of this Protective Order, “Protected Health  
19 Information” shall have the same scope and definition as set forth in 45 C.F.R.  
20 § 160.103. “Protected Health Information” includes, but is not limited to, health  
21 information, including demographic information, that (1) is created or received by a  
22 “covered entity”, *i.e.*, a health care provider, health plan, employer, or health care  
23 clearinghouse; (2) relates to either (a) the past, present, or future physical or mental  
24 condition of an individual, (b) the provision of health care to an individual, or (c)  
25 the past, present, or future payment for health care provided to an individual, and  
26 (3) identifies the individual or which reasonably can reasonably be believed to  
27 identify the individual.

28 4. For purposes of this Protective Order, CONFIDENTIAL

1 INFORMATION means any document, information, or tangible thing, electronic  
2 recording or transcript of oral testimony, whether or not made under oath, or any  
3 portion of such a document, thing, recording, or transcript, designated by any Party  
4 as “CONFIDENTIAL INFORMATION” because it contains (a) proprietary  
5 information (trade secret, proprietary matter, or other confidential research,  
6 development, or commercial information as those terms are used in Federal Rule of  
7 Civil Procedure 26, (b) confidential personal information, such that the Party  
8 making the designation avers that it can and would make a showing to the Court  
9 sufficient to justify the filing of the document or information under seal in  
10 accordance with Federal Rule of Civil Procedure 26(c), Local Rule 141, and  
11 controlling federal case law, or (c) information reasonably believed to be protected  
12 from disclosure pursuant to state or federal law, including “Protected Health  
13 Information.”

14 5. By way of example, the term “documents” includes but is not limited  
15 to operations records, institutional records, medical records, policy and procedure  
16 manuals, training materials, correspondence, emails, memoranda, or other printed  
17 or electronic matter, interoffice and/or intra-corporate communications, letters,  
18 statements, contracts, invoices, drafts, charts, maps, diagrams, video, photographs,  
19 medical records, institutional records, personnel files, work sheets, desk diaries,  
20 recordings, specifications, compilations from which information can be obtained  
21 and translated as required through detection devices into reasonably usable form,  
22 sketches, drawings, notes (including laboratory notebooks and records), disclosures,  
23 data, reports, work assignments, instructions, and other writings. By way of  
24 example, and not limitation, CONFIDENTIAL INFORMATION may include or be  
25 included in simulations, animations, computer programs and software, magnetic or  
26 digital discs, electronically recorded tapes of any sort, summaries, notes, abstracts,  
27 motions, drawings, videos, photographs, and any instrument that comprises,  
28 embodies, or summarizes otherwise CONFIDENTIAL INFORMATION.

1           6. During the Action, the Parties may produce certain documents  
2 pursuant to discovery requests, subpoenas, and other legal proceedings which  
3 request or require the disclosure of CONFIDENTIAL INFORMATION. At the  
4 time of production, the producing Party will designate the documents or portions  
5 thereof that they deem to contain CONFIDENTIAL INFORMATION. Only  
6 documents or portions thereof marked as “CONFIDENTIAL INFORMATION”  
7 will be subject to this Protective Order. CONFIDENTIAL INFORMATION will  
8 not be disseminated or produced except in accordance with this Protective Order.  
9 By designating a document or portion thereof as CONFIDENTIAL  
10 INFORMATION, the Party making the designation avers that it can and would  
11 make a showing to the Court sufficient to justify the filing of the document or  
12 portion thereof under seal in accordance with Federal Rule of Civil Procedure  
13 26(c), Local Rule 141, and controlling federal case law.

14           7. The designation of a document or portion thereof as CONFIDENTIAL  
15 INFORMATION shall be made, whenever possible prior to production, by placing  
16 or affixing on each page of such material in a manner that will not interfere with its  
17 legibility the words “CONFIDENTIAL INFORMATION.” If such designation is  
18 not possible prior to the production, the designation must be made by the producing  
19 Party within twenty (20) days after disclosure. In the event that documents subject  
20 to confidentiality, or portions thereof, are inadvertently produced without being  
21 designated CONFIDENTIAL INFORMATION, they shall be treated as  
22 CONFIDENTIAL INFORMATION as of the date of designation, if timely made.

23           8. Counsel for any Party retains the right to challenge the designation of a  
24 particular document or portion thereof as CONFIDENTIAL INFORMATION. The  
25 burden of proof with respect to the propriety or correctness of the designation of  
26 any document or portion thereof as CONFIDENTIAL INFORMATION will rest on  
27 the designating Party. If any Party believes any designation of a document or  
28 portion thereof as CONFIDENTIAL INFORMATION is inappropriate, the Parties

1 will meet and confer and attempt to resolve the issue on an expedited basis. If the  
2 Parties are unable to mutually agree on a resolution, the Parties will seek  
3 appropriate Court intervention, including a request for a discovery conference or  
4 call with the Magistrate Judge, and where appropriate, submit the documents to the  
5 Magistrate Judge under seal to determine whether and to what extent such  
6 documents or portions thereof should be deemed CONFIDENTIAL  
7 INFORMATION in accordance with this Protective Order. Specifically, the  
8 Magistrate Judge shall determine whether the Party seeking to designate  
9 CONFIDENTIAL INFORMATION has satisfied the requirements for filing the  
10 document or portion thereof sought to be designated under seal in accordance with  
11 Federal Rule of Civil Procedure 26(c), Local Rule 141, and controlling federal case  
12 law. Where requested or permitted by the Court, the Parties may provide the Court  
13 with separate statements containing the challenges by the Party opposing the  
14 CONFIDENTIAL INFORMATION designation and the justifications by the Party  
15 designating the documents or portions thereof as CONFIDENTIAL  
16 INFORMATION.

17 9. Whenever a deposition or court proceeding involves the disclosure of a  
18 Party's CONFIDENTIAL INFORMATION, the following procedure will apply:

19 (a) The court reporter will be directed to bind those portions of the  
20 transcript containing CONFIDENTIAL INFORMATION separately. This request  
21 will be made on the record whenever possible.

22 (b) The cover of any portion of a deposition or court proceeding  
23 transcript that contains testimony or documentary evidence that has been designated  
24 CONFIDENTIAL INFORMATION will be prominently marked:  
25 CONFIDENTIAL/SUBJECT TO PROTECTIVE ORDER.

26 (c) All portions of deposition or court proceeding transcripts  
27 designated as CONFIDENTIAL INFORMATION will be sealed and will not be  
28 disseminated except to the persons identified in Paragraph 12.

1           10. Any Party may designate a deposition or portion thereof as  
2 CONFIDENTIAL INFORMATION and subject to the Protective Order during or  
3 for a reasonable time after the deposition. If a Party intends to designate portions of  
4 a deposition as "CONFIDENTIAL" that Party shall have the right to limit  
5 attendance at the relevant portion of the deposition to the persons set forth in  
6 Paragraph 12 of this Order. For all pleadings that contain CONFIDENTIAL  
7 INFORMATION, the filing Party shall seek leave of court to file under seal  
8 consistent with the Local Rules for the Eastern District of California.

9           Upon a failure of the filing Party to file CONFIDENTIAL INFORMATION  
10 under seal, any Party may request that the Court place the document under seal.  
11 The procedures of Local Rule 141 shall be followed.

12           11. Either Party may challenge the designation of a deposition transcript,  
13 or a portion thereof, as CONFIDENTIAL INFORMATION, under the procedure  
14 set forth in Paragraph 8, above.

15           12. Unless otherwise provided in this Order, and subject to the provisions  
16 of Paragraphs 13 and 14, access to CONFIDENTIAL INFORMATION will be  
17 restricted to the Court, its officers, court personnel and stenographic parties  
18 engaged in proceedings in this matter, Plaintiff and Defense experts, any neutral  
19 experts retained jointly by the Parties, Plaintiff and Defense counsel (defined herein  
20 to include: attorneys in this action and their support staff, including paralegals, legal  
21 interns and legal assistants), other testifying or consulting experts, and those  
22 officers, directors, partners, members, employees, representatives and agents of all  
23 non-designating Parties that counsel for such Parties deems necessary to aid counsel  
24 in the prosecution and defense of this Proceeding; provided, however, that, prior to  
25 the disclosure of Confidential Information, the Receiving Party must agree to be  
26 bound by the terms of this Order.

27           13. The Parties agree that CONFIDENTIAL INFORMATION subject to  
28 this Protective Order shall be used solely for the purposes of this Action, and in no

1 other litigation, except as unsealed by the Court or filed in the public record in this  
2 Action.

3 14. Each person designated in Paragraph 12, by receiving and reading a  
4 copy of the Protective Order entered by the Court as part of this Stipulation and  
5 Protective Order, agrees to abide by its provisions and to see that its provisions are  
6 known and adhered to by those under his or her supervision or control, and to  
7 submit to the jurisdiction of the Court in the event the Protective Order is breached.

8 15. NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
9 THIS LITIGATION

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

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

19 (i) promptly notify in writing the Requesting Party and the  
20 Non-Party that some or all of the information requested is subject to a  
21 confidentiality agreement with a Non-Party;

22 (ii) promptly provide the Non-Party with a copy of the  
23 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a  
24 reasonably specific description of the information requested; and

25 (iii) make the information requested available for inspection  
26 by the Non-Party.

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



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

8 16. Within thirty (30) days of the conclusion of the litigation of this action,  
9 all material marked as CONFIDENTIAL INFORMATION under this  
10 Confidentiality Agreement and not received in evidence shall be returned to the  
11 producing Party or third Party, unless the Parties agree that the material may be  
12 destroyed instead of being returned, in which instance counsel shall certify that the  
13 documents have been destroyed. The Parties agree to request that the clerk of the  
14 Court return to the producing Party or third Party, or destroy, any sealed material  
15 and/or CONFIDENTIAL INFORMATION used as evidence at the end of the  
16 litigation, including appeals. This Confidentiality Agreement shall survive the  
17 discontinuance or other resolution of the action.

18 17. As far as the provisions of any protective orders entered in this action  
19 restrict the communication and use of the CONFIDENTIAL INFORMATION  
20 produced thereunder, such orders shall continue to be binding after the conclusion  
21 of this litigation, except that there shall be no restriction on documents that are used  
22 as exhibits in Court unless such exhibits were or should have been filed under seal.

23 18. Nothing in this Protective Order precludes Plaintiff or Defendant from  
24 seeking and obtaining, on an appropriate showing, additional protection

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1 with respect to the confidentiality of documents or portions thereof, or relief from  
2 the Protective Order.

3 IT IS SO STIPULATED.

4 Dated: September 25, 2017

BEST BEST & KRIEGER LLP

6 By: /s/ Richard T. Egger

7 RICHARD T. EGGER

8 LAUREN M. STRICKROTH

9 JACQUELINE YAEGER

Attorneys for Plaintiff

SAN JOAQUIN VALLEY

INSURANCE AUTHORITY, a joint  
powers authority

11 Dated: September 25, 2017

ANDERSON, McPHARLIN &  
CONNERS LLP

13 By: /s/ Kenneth D. Watnick

14 KENNETH D. WATNICK

15 THOMAS J. KEARNEY

Attorneys for Defendant

16 GALLAGHER BENEFIT

SERVICES, INC.

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**ORDER**

The Court, having reviewed the above Stipulated Qualified Protective Order, and good cause appearing, enters this Stipulated Qualified Protective Order as an Order of the Court.

IT IS SO ORDERED.

Dated: September 26, 2017

/s/ Eric P. Shroy  
UNITED STATES MAGISTRATE JUDGE

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I, \_\_\_\_\_, declare:

1. I have received a copy of the Stipulated Qualified Protective Order in the action entitled San Joaquin Valley Insurance Authority v. Gallagher Benefit Services Inc. No. 1:17-cv-00861-LJO-EPG (the “Protective Order”). I have carefully read and understand the provisions of the Protective Order.

2. I will comply with all of the provisions of the Protective Order. I will hold in confidence, and will not disclose to anyone other than those persons specifically authorized by the Protective Order, will not copy or use except for purposes of the Litigation, and will return or destroy pursuant to the terms of this Protective order, any information designated “Confidential” which I receive in the litigation.

3. I agree to submit to the continuing jurisdiction of the United States District Court for the Eastern District of California for purposes of enforcement of the Protective Order.

22 \_\_\_\_\_  
 23 \_\_\_\_\_