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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 SAN JOAQUIN VALLEY
12 INSURANCE AUTHORITY, a joint
powers authority,

13 Plaintiff,

14 v.

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

17 Defendants.

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Case No. 1:17-cv-00861-LJO-EPG
Judge: Hon. Erica P. Grosjean,
U.S. Magistrate Judge

**STIPULATED QUALIFIED
PROTECTIVE ORDER**

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STIPULATED QUALIFIED PROTECTIVE ORDER

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

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

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

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

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

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

(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) Appear 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

10 Attorneys for Plaintiff

11 SAN JOAQUIN VALLEY

12 INSURANCE AUTHORITY, a joint
13 powers authority

14 Dated: September 25, 2017

15 ANDERSON, McPHARLIN &
16 CONNERS LLP

17 By: */s/ Kenneth D. Watnick*

18 KENNETH D. WATNICK

19 THOMAS J. KEARNEY

20 Attorneys for Defendant

21 GALLAGHER BENEFIT
22 SERVICES, INC.

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ORDER

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

IT IS SO ORDERED.

Dated: September 26, 2017

/s/ Eric P. Groj
UNITED STATES MAGISTRATE JUDGE

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APPENDIX A

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ACKNOWLEDGMENT OF AND AGREEMENT TO BE BOUND BY
**7
PROTECTIVE ORDER**

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I, _____, declare:

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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.

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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.

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed at _____ this _____ day of _____, 20____.