

1 This Protective Order shall govern any record of information produced in
2 this action and designated pursuant to this Protective Order, including all
3 designated deposition testimony, all designated testimony taken at a hearing or
4 other proceeding, all designated deposition exhibits, interrogatory answers,
5 admissions, documents and other discovery materials, whether produced
6 informally or in response to interrogatories, requests for admissions, requests for
7 production of documents or other formal methods of discovery.

8 This Protective Order shall also govern any designated record of
9 information produced in this action pursuant to required disclosures under any
10 federal procedural rule or local rule of the Court and any supplementary
11 disclosures thereto.

12 This Protective Order shall apply to the parties and to any nonparty from
13 whom discovery may be sought who desires the protection of this Protective
14 Order.

15 2. Definitions

16 The term Confidential Information shall mean confidential or proprietary
17 technical, commercial, scientific, financial, business, health, personal, or medical
18 information designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY” by the producing party.

20 The term “Confidential Health Information” shall constitute a subset of
21 Confidential Information, and shall be designated as “CONFIDENTIAL” or
22 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and subject to all
23 other terms and conditions governing the treatment of Confidential Information.
24 Confidential Health Information shall mean information supplied in any form, or
25 any portion thereof, that identifies an individual or subscriber in any manner and
26 relates to the past, present, or future care, services, or supplies relating to the
27 physical or mental health or condition of such individual or subscriber, the
28 provision of health care to such individual or subscriber, or the past, present, or

1 future payment for the provision of health care to such individual or subscriber.
2 Confidential Health Information shall include, but is not limited to, claim data,
3 claim forms, grievances, appeals, or other documents or records that contain any
4 patient health information required to be kept confidential under any state or
5 federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the
6 Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R.
7 §§ 164.501 & 160.103), and the following subscriber, patient, or member
8 identifiers:

- 9 a. names;
- 10 b. all geographic subdivisions smaller than a State, including street
11 address, city, county, precinct, and zip code;
- 12 c. all elements of dates (except year) for dates directly related to an
13 individual, including birth date, admission date, discharge date, age,
14 and date of death;
- 15 d. telephone numbers;
- 16 e. fax numbers;
- 17 f. electronic mail addresses;
- 18 g. social security numbers;
- 19 h. medical record numbers;
- 20 i. health plan beneficiary numbers;
- 21 j. account numbers;
- 22 k. certificate/license numbers;
- 23 l. vehicle identifiers and serial numbers, including license plate
24 numbers;
- 25 m. device identifiers and serial numbers;
- 26 n. web universal resource locators (“URLs”);
- 27 o. internet protocol (“IP”) address numbers;
- 28 p. biometric identifiers, including finger and voice prints;

- 1 q. full face photographic images and any comparable images; and/or
- 2 r. any other unique identifying number, characteristic, or code.

3
4 The term “Documents” shall mean any “Writing,” “Original” and
5 “Duplicate” as those terms are defined in California Evidence Code sections 250,
6 255, and 260, which have been produced in discovery in this Action by any Party,
7 person, or entity; and any copies, reproductions, or summaries of all or any part of
8 the foregoing.

9 The term “Technical Advisor” shall refer to any person who is not a party
10 to this action or not presently employed by the receiving party or a company
11 affiliated through common ownership, who has been designated by the receiving
12 party to receive another party’s Confidential Information, including Confidential
13 Health Information. Each party’s Technical Advisors shall be limited to such
14 person as, in the judgment of that party’s counsel, are reasonably necessary for
15 development and presentation of that party’s case. These persons include outside
16 experts or consultants retained to provide technical or other expert services such
17 as expert testimony or otherwise assist in trial preparation.

18 **3. Designation of Information**

19 Documents and things produced or furnished during the course of this action
20 shall be designated as containing Confidential Information, including Confidential
21 Health Information, by clearly placing on each page, each document (whether in
22 paper or electronic form), or each thing a legend substantially as follows:

23 **CONFIDENTIAL**

24 **Or**

25 **HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY**

26 A party may designate information disclosed at a deposition as Confidential
27 Information by requesting the reporter to so designate the transcript at the time of
28 the deposition. Where specific portions are designated as Confidential

1 Information, the transcript pages containing Confidential Information may be
2 separately bound by the court reporter, who must affix the designation label as
3 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” at the top of each
4 page.

5 A producing party shall designate its discovery responses, responses to
6 requests for admission, briefs, memoranda and all other papers sent to the court or
7 to opposing counsel as containing Confidential Information when such papers are
8 served or sent.

9 A party shall designate information disclosed at a hearing or trial as
10 Confidential Information by requesting the court, at the time the information is
11 proffered or adduced, to receive the information only in the presence of those
12 persons designated to receive such information and court personnel, and to
13 designate the transcript appropriately.

14 For Confidential Information in some form other than Documents or
15 deposition testimony, the producing party must affix the designation label of
16 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in a prominent
17 place on the exterior of the container or containers in which the Confidential
18 Information is stored. If only portions of the item are Confidential Information,
19 the producing party, to the extent practicable, shall identify the Confidential
20 Information.

21 The parties will use reasonable care to avoid designating any documents or
22 information as Confidential Information that is not entitled to such designation or
23 which is generally available to the public. The parties shall designate only that
24 part of a document or deposition that is Confidential Information, rather than the
25 entire document or deposition.

26 A producing party may designate as “**Highly Confidential – Attorneys’**
27 **Eyes Only**” any information or documents produced in discovery, pursuant to
28 legal process, or exchanged informally for settlement purposes, if the person

1 making the designation reasonably believes, in good faith, that the material so
2 designated contains or constitutes highly confidential personal or commercial
3 information, such as trade secrets, financial information, business strategy, or
4 other information, disclosure of which would be especially detrimental or harmful
5 to the producing part or its business.

6 **4. Disclosure and Use of Confidential Information**

7 Information that has been designated Confidential shall be disclosed by the
8 receiving party only to Qualified Recipients. All Qualified Recipients shall hold
9 such information received from the disclosing party in confidence, shall use the
10 information only for purposes of this action and for no other action, and shall not
11 use it for any business or other commercial purpose, and shall not use it for filing
12 or prosecuting any patent application (of any type) or patent reissue or
13 reexamination request, and shall not disclose it to any person, except as hereinafter
14 provided. A violation of this section shall be deemed a material violation of this
15 Protective Order.

16 All information that has been designated Confidential or Highly
17 Confidential – Attorneys’ Eyes Only shall be carefully maintained so as to
18 preclude access by persons who are not qualified to receive such information under
19 the terms of this Order.

20 In the event that any receiving party’s briefs, memoranda, discovery
21 requests, requests for admission or other papers of any kind which are served or
22 filed shall include another party’s Confidential Information, the papers shall be
23 appropriately designated and shall be treated accordingly.

24 All documents, including attorney notes and abstracts, which contain
25 another party’s Confidential Information, shall be handled as if they were
26 designated pursuant to paragraph 3.

27 ~~Documents, papers and transcripts filed with the court that contain any other~~
28 ~~party’s Confidential Information shall be filed under seal.~~

1 Entering into, agreeing to, and/or complying with the terms of this
2 Protective Order shall not:

- 3 a. Operate as an admission by any person that any particular document,
4 information, or material contains or reflects trade secrets, proprietary,
5 confidential, or competitively sensitive business, commercial,
6 financial, or personal information;
- 7 b. Operate as a waiver for any person the right to challenge another
8 Party's designation of any documents, information, or materials as
9 Confidential Information;
- 10 c. Alter, waive, modify, or abridge any right, privilege, or protection
11 available to any Party with respect to discovery, including but not
12 limited to any Party's right to assert the attorney-client privilege, the
13 attorney work product doctrine, or other privileges, or any Party's
14 right to contest any such assertion; or
- 15 d. Prejudice the right of any person to seek relief from the arbitrator or
16 Court from any provision of this Protective Order.

17 In the event any Confidential Information is or was used in any pretrial or
18 discovery proceeding in this action, it shall not lose its confidentiality through such
19 use. All pleadings, motions, oral discovery, and written discovery in this Action
20 which contain or discuss Confidential Information shall be presented only to
21 persons authorized to receive such Confidential Information under this Protective
22 Order.

23 **5. Qualified Recipients**

24 For purposes of this Order, the term Qualified Recipient means

- 25 a. Outside counsel of record for any party in this action, as well as
26 employees of such counsel (excluding experts and investigators)
27 assigned to and necessary to assist such counsel in the preparation and
28 trial of this action;

- 1 b. Representatives, officers, or employees of a party as necessary to
2 assist outside counsel in the preparation and trial of this action;
- 3 c. In-house counsel for the Receiving Party;
- 4 d. Witnesses who testify by deposition or at trial who, if not a
5 representative, officer, or employee of a party, shall be advised about
6 the terms of this Order and that such Order is applicable to them in
7 connection with their testimony and do not retain copies of
8 Confidential Information;
- 9 e. Persons who were authors or recipients of the Confidential
10 Information or previously had legal access to Confidential
11 Information;
- 12 f. Technical Advisors, expert witnesses, or consultants engaged by a
13 party to assist with the preparation and trial of this action provided
14 such expert or consultant agrees in writing, in the form attached at
15 Appendix A, to be bound by the terms of this Order;
- 16 g. Any designated arbitrator or mediator who is assigned to hear this
17 matter, or who has been selected by the parties, and his or her staff,
18 provided that such individuals agree in writing, in the form attached at
19 Appendix A, to be bound by the terms of this Order;
- 20 h. Stenographers and videographers engaged to transcribe or record
21 depositions conducted in this action provided that such individuals
22 agree in writing, in the form attached at Appendix A, to be bound by
23 the terms of this Order;
- 24 i. The Court and its support personnel; and
- 25 j. Such other persons as hereafter may be designated by written
26 agreement of the Parties or by order of the Court.

27 Confidential Information designated as “Highly Confidential – Attorneys’
28 Eyes Only” (hereinafter “Attorneys’ Eyes Only Material”) shall be disclosed only

1 to the Qualified Recipients listed in subparagraphs 5(a), (e), (f), (i), and (j) above,
2 unless otherwise agreed or ordered. For the purposes of subparagraph 5(a),
3 Attorneys' Eyes Only Material may not be shown to any member or employee of
4 any law firm or other entity or individual who has been, is currently, or will be in
5 the foreseeable future involved in the negotiation of contracts on behalf of any of
6 the Parties to this Agreement, unless the person authored the document or is
7 identified on the face of the document as a previous recipient. Additionally,
8 Attorneys' Eyes Only Material may be shown to persons listed in subparagraphs
9 5(c) and (d) under the following conditions:

- 10 a. For the purposes of subparagraph 5(c), Attorneys' Eyes Only
11 Material may be shown to in-house litigation counsel for the
12 Parties, provided that any in-house litigation counsel to whom
13 Attorneys' Eyes Only Material is shown is not and will not in
14 the foreseeable future be involved in the negotiation of
15 contracts between the Parties, and does not share the
16 documents, or the contents thereof, with any of the Parties'
17 directors, officers, agents, or employees who negotiate
18 contracts between the Parties.
- 19 b. Attorneys' Eyes Only Material may be shown to persons under
20 subparagraph 6(d) if the witness is an employee of the party
21 who produced the information designated as "Highly
22 Confidential – Attorneys' Eyes Only", if the witness is
23 identified on the face of the document as a previous recipient,
24 or if the party who produced the information as "Highly
25 Confidential – Attorneys' Eyes Only" consents before such
26 designated information is disclosed to the witness.

27 Any Party, person, or entity receiving information designated as
28 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" shall not reveal

1 or discuss such information to or with any person who is not permitted to receive
2 such information, except as set forth herein.

3 Confidential Information held by a Party may be disclosed to persons as
4 provided in Subsection 4 provided that prior to such disclosure the person to whom
5 disclosure of Confidential Information is to be made shall acknowledge and
6 confirm in writing in the form attached at Appendix A, that he or she has read this
7 Protective Order and agrees to comply with its terms.

8 **6. Nonparties**

9 Any nonparty who produces documents or other information in response to
10 discovery requests or subpoenas in this litigation shall be entitled to the benefits
11 and protections of this Order and shall be entitled to seek additional protections.

12 The parties agree that they will treat Confidential Information produced by
13 nonparties according to the terms of this Order.

14 Nonparties may challenge the confidentiality of Confidential Information
15 by filing a motion to intervene and a motion to de-designate.

16 **7. Inadvertent Failure to Designate**

17 In the event that a producing party inadvertently fails to designate any of
18 its information as “Confidential” or “Highly Confidential – Attorneys’ Eyes
19 Only” pursuant to Paragraph 3, it may later designate by notifying the receiving
20 parties in writing. The receiving parties shall take reasonable steps to see that
21 the information is thereafter treated in accordance with the designation.

22 The producing party shall specifically identify, by reference to document
23 title, page number, and/or any alpha and/or numeric production designation, the
24 documents, information, or material to be designated as “Confidential” or
25 “Highly Confidential – Attorneys’ Eyes Only.” The producing party shall have
26 the right to recover all copies of the documents, information, or material to be
27 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”
28 and apply the “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”

1 designation label, and the receiving party shall return to the producing party all
2 copies of unlabeled documents, information, or material that was inadvertently
3 disclosed.

4 It shall be understood however, that no person or party shall incur any
5 liability hereunder with respect to disclosure that occurred prior to receipt of
6 written notice of a belated designation.

7 The inadvertent or *in camera* disclosure of Confidential Information shall
8 not, under any circumstances, be deemed a waiver, in whole or in part, of any
9 Party's claims of confidentiality.

10 **8. Inadvertent Disclosure**

11 In the event of an inadvertent disclosure of another party's Confidential
12 Information to a non-Qualified Recipient, the party making the inadvertent
13 disclosure shall promptly upon learning of the disclosure: (i) notify the person to
14 whom the disclosure was made that it contains Confidential Information subject
15 to this Order; (ii) make all reasonable efforts to preclude dissemination or use of
16 the Confidential Information by the person to whom disclosure was inadvertently
17 made including, but not limited to, obtaining all copies of such materials from the
18 non-Qualified Recipient; and (iii) notify the producing party of the identity of the
19 person to whom the disclosure was made, the circumstances surrounding the
20 disclosure, and the steps taken to ensure against the dissemination or use of the
21 information.

22 **9. Challenge to Designation**

23 At any time after the delivery of Confidential Information, counsel for the
24 party receiving the Confidential Information may challenge the designation of all
25 or any portion thereof by providing written notice thereof to all counsel of record,
26 including counsel for the party disclosing or producing the Confidential
27 Information. If the parties are unable to agree as to whether the confidential
28 designation of discovery material is appropriate, the party receiving the

1 Confidential Information shall certify to the Court that the parties cannot reach an
2 agreement as to the confidential nature of all or a portion of the Confidential
3 Information. Thereafter, the party disclosing or producing the Confidential
4 Information shall have fourteen days from the date of certification to file a motion
5 for protective order with regard to any Confidential Information in dispute. The
6 party producing the Confidential Information shall have the burden of establishing
7 that the disputed Confidential Information is entitled to confidential treatment. If
8 the party producing the Confidential Information does not timely file a motion for
9 protective order, the Confidential Information in dispute shall no longer be subject
10 to confidential treatment as provided in this Order. All Confidential Information
11 is entitled to confidential treatment pursuant to the terms of this Order until and
12 unless the parties formally agree in writing to the contrary, a party fails to timely
13 move for a protective order, or a contrary determination is made by the Court as
14 to whether all or a portion of designated Confidential Information is entitled to
15 confidential treatment.

16 Neither Party shall be obligated to challenge the propriety of any designation
17 of documents, information, or material, and a failure to so challenge shall not
18 preclude a subsequent attack on the propriety of such designation, unless prejudice
19 can be shown by the producing to have resulted from the delay in challenging the
20 designation.

21 **10. Conclusion of Action**

22 Within ninety (90) days following the termination of this Action through
23 settlement or adjudication, and upon written request, all Confidential Information
24 shall be returned to the producing party or destroyed; and all copies, summaries,
25 or transcripts thereof, and any other documents which contain, reflect, refer, or
26 relate to such Confidential Information which are not returned to the producing
27 party shall be destroyed. Upon written request, counsel of record for each Party
28 shall attest to compliance with the terms of this paragraph in an affidavit or

1 declaration served on the other Party within the ninety- (90-) day period. This
2 paragraph shall not preclude counsel from maintaining a file copy of any
3 pleadings, motions, oral discovery, and written discovery that contains or attaches
4 Confidential Information.

5 The provisions of this paragraph shall not be binding on the United States,
6 any insurance company, or any other party to the extent that such provisions
7 conflict with applicable Federal or State law. The Department of Justice, any
8 insurance company, or any other party shall notify the producing party in writing
9 of any such conflict it identifies in connection with a particular matter so that such
10 matter can be resolved either by the parties or by the Court.

11 **11. Jurisdiction to Enforce Protective Order**

12 After the termination of this action, the Court will continue to have
13 jurisdiction to enforce this Order.

14 **12. Modification of Protective Order**

15 This Order is without prejudice to the right of any person or entity to seek a
16 modification of this Order at any time either through stipulation or Order of the
17 Court.

18 **13. Confidentiality of Party's Own Documents**

19 Nothing herein shall affect the right of the designating party to disclose to
20 its officers, directors, employees, attorneys, consultants or experts, or to any other
21 person, its own information. Such disclosure shall not waive the protections of
22 this Protective Order and shall not entitle other parties or their attorneys to disclose
23 such information in violation of it, unless by such disclosure of the designating
24 party the information becomes public knowledge. Similarly, the Protective Order
25 shall not preclude a party from showing its own information, including its own
26 information that is filed under seal by a party, to its officers, directors, employees,
27 attorneys, consultants or experts, or to any other person.

28 **14. Compulsory Disclosure to Third Parties**

1 If any receiving party is subpoenaed in another action or proceeding or
2 served with a document or testimony demand or a court order, and such subpoena
3 or demand or court order seeks Confidential Information, including Confidential
4 Health Information of a producing party, the receiving party shall give prompt
5 written notice to counsel for the producing party and allow the producing party an
6 opportunity to oppose such subpoena or demand or court order prior to the
7 deadline for complying with the subpoena or demand or court order. No
8 compulsory disclosure to third parties of information or material exchanged under
9 this Order shall be deemed a waiver of any claim of confidentiality, except as
10 expressly found by a court or judicial authority of competent jurisdiction.

11 **15. Binding Effect**

12 This Order shall be binding upon the parties and their attorneys, successors,
13 executors, personal representatives, administrators, heirs, legal representatives,
14 assigns, subsidiaries, divisions, employees, agents, independent contractors, or
15 other persons or organizations over which they have control.

16 This Protective Order may be executed in counterparts, each when taken
17 together with the others, shall constitute a whole, as if executed simultaneously .

18 **ORDER**

19 Based upon the stipulation of counsel, the Court **ORDERS:**

- 20 1. The stipulated protective order is **GRANTED in PART**. It is modified to delete
21 lines 27 and 28 on page six.
- 22 2. If any party wishes for the Court to consider filing a document under seal, that
23 party SHALL comply with Local Rule 141.

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25 IT IS SO ORDERED.

26 Dated: November 6, 2018

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KERN COUNTY HOSPITAL
AUTHORITY, A PUBLIC AGENCY
THAT IS A LOCAL UNIT OF
GOVERNMENT, WHICH OWNS
AND OPERATES KERN MEDICAL
CENTER,

Plaintiffs,

vs.

UNITEDHEALTHCARE
INSURANCE COMPANY, a
Connecticut for-profit corporation;
and DOES 1 THROUGH 25,
INCLUSIVE,
Defendants.

CASE NO. 18-cv-00473-DAD-JLT

**APPENDIX A – PROTECTIVE
ORDER UNDERTAKING**

I, _____, declare that:

- My address is _____. My
current employer is _____. My
current occupation is _____.

1 2. I have received a copy of the Qualified Protective Order in this action.
2 I have carefully read and understand the provisions of the Qualified Protective
3 Order.

4 3. I will comply with all of the provisions of the Qualified Protective
5 Order and agree to be bound by the Qualified Protective Order. I will hold in
6 confidence, will not disclose to anyone not qualified under the Qualified Protective
7 Order, and will use only for purposes of this action any Confidential Information
8 or information designated as “Confidential” that is disclosed to me.

9 4. Promptly upon termination of the relevant action, I will either return
10 in full to the outside counsel for the party by whom I am employed or completely
11 destroy all documents and things designated as “Confidential” that came into my
12 possession, and all documents and things that I have prepared relating thereto.

13 5. I understand that the obligations of this undertaking and the provisions
14 of the Qualified Protective Order continue past the termination of the action.

15 6. I hereby submit to the jurisdiction of this Court for the purpose of
16 enforcement of the Qualified Protective Order in this action.

17 I declare under penalty of perjury that the foregoing is true and correct.

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Signature _____

Date _____