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7 UNITED HEALTHCARE INSURANCE COMPANY

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO

11 KIMBERLY SHEPARD,

12 Plaintiff,

13 v.

14 UNITED HEALTHCARE
15 INSURANCE COMPANY,

16 Defendant.

CASE NO. 09-CV-00843 MCE (DADx)

STIPULATED PROTECTIVE ORDER

17 WHEREAS, the parties to this action believe that certain information that is
18 or may be sought or disclosed in discovery in this action may constitute
19 confidential financial, business and other commercial and sensitive personal
20 records, reports and information entitled to protection from disclosure under
21 California and Federal law;

22 WHEREAS, the parties desire to establish a mechanism to prevent the
23 improper disclosure of such information whether produced by parties or other
24 persons;

25 IT IS HEREBY STIPULATED, that:

26 1. The procedures outlined in this Stipulated Protective Order
27 (“Stipulation and Order”) shall apply to all documents, things and information
28 subject to discovery or disclosed pursuant to the Federal Rules of Civil Procedure

1 or offered in any court filings or at court hearings or trial, including without
2 limitation, written discovery responses, documents and tangible things produced,
3 expert reports, or transcripts of any testimony adduced at deposition upon oral
4 examination or at court hearings (including any trials).

5 2. For purposes of this Stipulation and Order, the following definitions
6 shall apply:

7 (a) As used herein “DOCUMENT” shall mean any “writing” as
8 defined in Rule 1001 of the Federal Rules of Evidence, including without
9 limitation any records, exhibits, reports, samples, transcripts, video or audio
10 recordings, affidavits or declarations, briefs and motion papers, summaries, notes,
11 abstracts, drawings, company records and reports, written discovery responses, or
12 databases, whether tangible or stored as computer records;

13 (b) As used herein, “DESIGNATING PARTY” shall mean a party
14 that seeks to designate a particular DOCUMENT in accordance with the
15 designation set forth in paragraph 3 immediately below.

16 (c) As used herein, “REQUESTING PARTY” shall mean a party
17 that seeks production of a particular DOCUMENT.

18 3. The following confidentiality designation available with respect to
19 DOCUMENTS produced in this matter are:

20 A party may affix the legend “CONFIDENTIAL INFORMATION” to
21 DOCUMENTS it believes to contain information subject to protection under Rule
22 26(b) of the Federal Rules of Civil Procedure.

23 4. Parties and non-parties need not designate DOCUMENTS before
24 producing them for inspection by the REQUESTING PARTY. However,
25 designations must be made by the DESIGNATING PARTY before copies of
26 produced documents are provided to, or are made by, the REQUESTING PARTY.
27 Designations will be made by affixing the appropriate legend on each and every
28 page of the designated DOCUMENT. In the case of information disclosed in a

1 non-paper medium (e.g. video tape, computer disks, etc), the appropriate legend
2 shall be affixed to the outside of the medium or its container so as to clearly give
3 notice of its designation. This designation is deemed to apply both to the non-paper
4 medium itself and to the information contained therein.

5 5. DOCUMENTS bearing the legend CONFIDENTIAL
6 INFORMATION shall not be disclosed outside this litigation.

7 6. If any Party seeks to file with the Court a DOCUMENT bearing the
8 legend "CONFIDENTIAL INFORMATION" that Party must first obtain
9 permission of the Court to file the document under seal in accordance with Local
10 Rules 140 and 141 and thereafter the document shall be marked:

11 (a) "Contains CONFIDENTIAL INFORMATION; To be Opened
12 Only By or As Directed By the Court"

13 (b) or with such other designation as is ordered by the Court or as
14 required by the Clerk of the Court.

15 A copy of this filed endorsed Stipulation and Order will be submitted with
16 all DOCUMENTS requested to be filed under seal pursuant to this paragraph.

17 7. Should need arise during the trial or any hearing before the Court for
18 either party to cause CONFIDENTIAL INFORMATION to be disclosed, it may do
19 so as ordered by the Court or by agreement of the parties or their attorneys.

20 8. This Stipulation and Order shall be without prejudice to the right of
21 any party to bring before the Court at any time the question of whether any
22 particular DOCUMENT or the information contained therein is
23 "CONFIDENTIAL" or whether its use should be restricted to disclosure to persons
24 or entities designated in paragraph 11 below or to present a motion pursuant to
25 Rule 26(b) of the Federal Rules of Civil Procedure for a separate protective order
26 as to any particular document or information, including restrictions differing from
27 those as specified herein. This Stipulation and Order shall not be deemed to
28 prejudice the parties in any way in any future application for modification of this

1 Stipulation and Order. On any motion challenging the designation of any
2 particular DOCUMENT or the information designated therein as
3 “CONFIDENTIAL,” in accordance with Rule 26 (b) of the Federal Rules of Civil
4 Procedure, the party seeking to uphold its designation shall bear the burden of
5 establishing good cause for the protection sought. An opposing party shall not be
6 obligated to challenge the propriety of a designation at the time made, and failure
7 to do so shall not preclude subsequent challenge.

8 9. With respect to any DOCUMENT bearing one of the designations set
9 forth in Section 3 above, the DESIGNATING PARTY shall produce a clean (i.e.,
10 undesignated) copy of that DOCUMENT within twenty (20) calendar days from
11 any of the following occurrences: (a) the DESIGNATING PARTY’S withdrawal
12 of its designation of that DOCUMENT; or (b) notice of entry by the Court of an
13 order nullifying the designation with respect to that DOCUMENT.

14 10. Testimony given at any deposition, or trial may be designated as
15 “CONFIDENTIAL” by making a statement to that effect on the record at the
16 deposition, hearing or trial. Arrangements shall be made with the court reporter
17 taking and transcribing such proceeding to separately bind such portions of the
18 transcript containing information designated as “CONFIDENTIAL,” and to label
19 such portions appropriately.

20 11. DOCUMENTS designated as “CONFIDENTIAL” by a
21 DESIGNATING PARTY or the information contained therein, may be disclosed
22 only to the parties to this action, their present and former officers, directors or
23 employees, so designated by any party to aid in the prosecution, defense or
24 settlement of this action, their in-house or outside counsel (together with their
25 paralegal assistants, clerical and secretarial staffs), the Court (including Court
26 personnel and jurors), court reporter(s) employed in this action and any experts or
27 consultants (together with their clerical staff) retained by the parties and/or their
28 counsel for assistance in the prosecution, defense or settlement of the litigation, but

1 with the sole exception of the Court, only after they have been informed of this
2 stipulation, have agreed to be bound by it and have executed a nondisclosure
3 agreement in the form of Attachment A affixed hereto. Disclosure shall be made to
4 such persons only as is necessary for the prosecution, defense or settlement of this
5 litigation.

6 12. Depositions at which any "CONFIDENTIAL" DOCUMENTS, or the
7 information contained therein, is introduced as exhibits or their contents are
8 otherwise mentioned or used shall be taken only in the presence of those persons
9 designated in paragraph 11 above.

10 13. The Clerk of the Court is directed to maintain under seal all materials
11 filed with the Court which comprise or contain designated material.

12 14. Nothing herein shall be construed as an agreement or admission by
13 any party that any designated material is in fact confidential, contains trade secrets,
14 or is relevant, admissible or material, nor shall anything herein alter any existing
15 obligation of any party or the absence thereof.

16 15. This Stipulation and Order shall survive the termination of this action
17 (by settlement or by judgment which is final and no longer subject to appeal or
18 review), to the extent that the information contained in the "CONFIDENTIAL"
19 DOCUMENTS remains private or is not or does not become known to the public,
20 and the Court shall retain jurisdiction to resolve any dispute concerning the use of
21 information disclosed hereunder. Within 30 days after the conclusion of this
22 litigation, all materials designated hereunder and all copies thereof shall be
23 returned (or destroyed with written confirmation of such destruction) to the counsel
24 for the designating person or party who produced the documents.

25 16. Nothing in this Stipulation and Order shall preclude either party from
26 disclosing or using, in any manner or for any purpose, any DOCUMENT which
27 was lawfully in its possession prior to this litigation or was obtained from a third
28 party having the apparent right to disclose that DOCUMENT.

1 17. Nothing herein shall preclude any DESIGNATING PARTY who
2 originally designated DOCUMENTS or information contained therein which were
3 produced during discovery as “CONFIDENTIAL” from itself disclosing such
4 DOCUMENTS or the information contained therein which that DESIGNATING
5 PARTY originally designated as “CONFIDENTIAL” during discovery as that
6 DESIGNATING PARTY deems appropriate.

7 18. Nothing in this Stipulation and Order shall require production of a
8 DOCUMENT which a party contends is protected from disclosure by the attorney-
9 client privilege or work product immunity. If a DOCUMENT subject to a claim of
10 attorney-client privilege or work product immunity is nevertheless inadvertently
11 produced, such production shall in no way prejudice or otherwise constitute a
12 waiver of, or estoppel as to, any claim of privilege or work product immunity for
13 that DOCUMENT. If a party has inadvertently produced to the other party a
14 DOCUMENT subject to a claim of immunity or privilege, the other party upon
15 request shall promptly return all copies of that DOCUMENT and shall destroy any
16 newly created DOCUMENT containing a summary of or comment regarding the
17 inadvertently produced DOCUMENT.

18 19. The parties intend that this Stipulation and Order be binding upon
19 them and enforceable as an Order of the Court. The parties seek the Court’s
20 approval and entry of the terms of this Stipulation and Order as an Order of the
21 Court. Prior to entry, however, this Stipulation and Order shall be binding upon
22 the parties hereto and all parties with notice of it to whom disclosure of
23 “CONFIDENTIAL” DOCUMENTS or the information contained therein has been
24 made under its terms, and such parties or persons agree that the Court may impose
25 such sanctions for violation of the Stipulation and Order as would be appropriate
26 had the Stipulation and Order been filed and entered as an Order of the Court at the
27 time of the violation.

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1 20. Any other party that is not an original signatory to this Stipulation and
2 Order may at any time enter into this Stipulation and Order whereby the terms and
3 conditions set forth herein will have the same force and effect to subsequent parties
4 as it does to the original parties herein. All parties to this Stipulation and Order
5 specifically reserve, without limitation, any and all discovery objections made to
6 any discovery request served in this action and agree that this Stipulation and
7 Order does not constitute a waiver of any rights or objections whatsoever that the
8 parties have asserted or may assert throughout the continuation of this action.
9 Nothing in this Stipulation and Order shall be construed to prohibit any party from
10 asserting that the Stipulation and Order does not adequately protect the rights and
11 interest of a party or any third parties in documents or information that have been
12 sought in discovery and objected to in this action.

13
14 DATED: January 25, 2010

SEDGWICK, DETERT, MORAN & ARNOLD LLP

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16
17 By: /s/ Edward A. Stumpp
18 David M. Humiston
19 Edward A. Stumpp
20 Attorneys for Defendant
UNITED HEALTHCARE INSURANCE
COMPANY

21 DATED: January 25, 2010

KANTOR & KANTOR

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24 By: /s/ Elizabeth Green
25 Lisa Sue Kantor
26 Elizabeth Green
27 Attorneys for Plaintiff
28 KIMBERLY SHEPARD

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Appendix A

Viewing Record and Agreement

The undersigned hereby acknowledges:

1. I have received a copy of the Stipulated Protective Order for Production of Documents entered into in the matters of *Kimberly Shepard v. United Healthcare Insurance Company*, United States District Court Case No. CV-09-00843 MCE (DADx).

2. I have been provided temporary custody and/or viewing privileges to **CONFIDENTIAL DOCUMENTS** as defined in the Stipulated Protective Order, and in consideration thereof, I agree to be bound by the terms and conditions of the Stipulation and Order.

Dated: _____

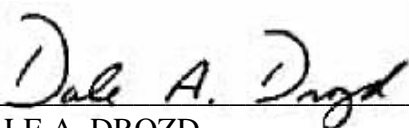
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ORDER

After considering the Stipulated Protective Order IT IS HEREBY
ORDERED THAT the Stipulation and Order is APPROVED BY THE COURT.
DATED: January 28, 2009.



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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