

**HOOPER, LUNDY & BOOKMAN, P.C.**  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 DEVIN M. SENELICK (State Bar No. 221478)  
KATHERINE M. DRU (State Bar No. 280231)  
2 BRIDGET A. GORDON (State Bar No. 287098)  
**HOOPER, LUNDY & BOOKMAN, P.C.**  
3 1875 Century Park East, Suite 1600  
Los Angeles, California 90067-2517  
4 Telephone: (310) 551-8111  
Facsimile: (310) 551-8181  
5 [dsenelick@health-law.com](mailto:dsenelick@health-law.com)

6 Attorneys for Plaintiffs  
NUTRISHARE, INC., PATIENT ONE,  
7 PATIENT TWO, and PATIENT THREE

8 Ronald K. Alberts (SBN: 100017)  
GORDON & REES LLP  
9 633 West Fifth Street, 52nd Floor  
Los Angeles, CA 90071  
10 Telephone: (213) 576-5000  
Facsimile: (213) 680-4470  
11 [ralberts@gordonrees.com](mailto:ralberts@gordonrees.com)

12 Jordan S. Altura (SBN: 209431)  
Tino X. Do (SBN: 221346)  
13 GORDON & REES LLP  
275 Battery Street, Suite 2000  
14 San Francisco, CA 94111  
Telephone: (415) 986-5900  
15 Facsimile: (415) 986-8054  
16 [jaltura@gordonrees.com](mailto:jaltura@gordonrees.com)  
[tdo@gordonrees.com](mailto:tdo@gordonrees.com)

17 Attorneys for Defendants  
CONNECTICUT GENERAL  
18 LIFE INSURANCE COMPANY and  
CIGNA HEALTH AND LIFE INSURANCE COMPANY  
19

20 **UNITED STATES DISTRICT COURT**

21 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

22 NUTRISHARE, INC., a California  
23 Corporation; PATIENT ONE, an individual;  
PATIENT TWO, an individual; and PATIENT  
24 THREE, an individual,

25 Plaintiffs,

26 vs.

27 CONNECTICUT GENERAL LIFE  
INSURANCE COMPANY, a Connecticut  
28 Corporation; CIGNA HEALTH AND LIFE

Case No. 2:15-CV-00351-JAM-AC

**STIPULATION AND ORDER  
REGARDING THE TREATMENT OF  
CONFIDENTIAL INFORMATION  
PRODUCED IN DISCOVERY**

The Hon. John A. Mendez

Trial Date: June 20, 2016

1 INSURANCE COMPANY, a Connecticut  
2 Corporation, and DOES 1 THROUGH 100,  
3 inclusive,  
4  
5 Defendants.  
6

7 **TO THIS HONORABLE COURT:**

8 COME NOW Plaintiffs, Nutrishare, Inc. (“Nutrishare”) and Patient One, Patient Two, and  
9 Patient Three (the “Patients”) (Nutrishare and the Patients together, “Plaintiffs”) and Defendants  
10 Connecticut General Life Insurance Company and CIGNA Health and Life Insurance Company  
11 (together, “CIGNA”) (Nutrishare and CIGNA collectively referred to as “Parties”), who hereby  
12 stipulate as to the entry of the following Protective Order governing the disclosure of confidential  
13 information in this matter:

14 1. PURPOSES AND LIMITATIONS

15 The Court and Parties recognize that at least some of the documents and information being  
16 sought through discovery in the above-captioned action are normally kept confidential by Parties.  
17 Disclosure and discovery activity in this action are likely to involve production of confidential or  
18 private information, including without limitation protected health information, for which special  
19 protection from public disclosure and from use for any purpose other than prosecuting this  
20 litigation would be warranted. The purpose of this Order is to protect the confidentiality of such  
21 materials as much as practical during the litigation, including without limitation as required by  
22 law. Accordingly, Parties hereby stipulate to and petition the Court to enter the following  
23 Stipulated Protective Order. Parties acknowledge that this Order does not confer blanket  
24 protections on all disclosures or responses to discovery and that the protection it affords extends  
25 only to the limited information or items that are entitled under the applicable legal principles to  
26 treatment as confidential.

27 Parties further acknowledge, as set forth in Section 10 below, that in accordance with  
28 Local Rule 141 and subject to public policy and further court order, nothing shall be filed under

1 seal, and the Court shall not be required to take any action, without separate prior order by the  
2 Judge before whom the hearing or proceeding will take place, after application by the affected  
3 party with appropriate notice to opposing counsel.

4 2. DEFINITIONS

5 2.1 Party: any party to this action, including all of its officers, directors, employees,  
6 consultants, retained experts, and outside counsel (and their support staff).

7 2.2 Disclosure or Discovery Material: all items or information, regardless of the  
8 medium or manner generated, stored, or maintained (including, among other things, testimony,  
9 transcripts, or tangible things) that are produced or generated in disclosures or responses to  
10 discovery in this matter.

11 2.3 “Confidential” Information or Items: information (regardless of how generated,  
12 stored or maintained) or tangible things that qualify for protection under standards developed  
13 under Fed. R. Civ. P. 26(c). In this particular litigation, based on Parties’ allegations and  
14 contentions, Parties anticipate this Order will be used principally to protect personal medical  
15 information and protected health information of consumers and patients, including sensitive  
16 information regarding patient medical records, information regarding medical services requested,  
17 provided, and medical services for which CIGNA was billed or paid.

18 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
19 Producing Party.

20 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery  
21 Material in this action.

22 2.6. Designating Party: a Party or non-party that designates information or items that it  
23 produces in disclosures or in responses to discovery as “Confidential.”

24 2.7 Protected Material: any Disclosure or Discovery Material that is designated as  
25 “Confidential.”

26 2.8. Outside Counsel: attorneys (including their support staff) who are not employees of  
27 a Party but who are retained to represent or advise a Party in this action.

28

1           2.9     House Counsel: attorneys (including their support staff) who are employees of a  
2 Party.

3           2.10    Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
4 support staff).

5           2.11    Expert: a person with specialized knowledge or experience in a matter pertinent to  
6 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
7 consultant in this action and who is not a past or a current employee of a Party or Party's  
8 competitor and who, at the time of retention, is not anticipated to become an employee of a Party  
9 or a competitor of a Party's. This definition includes a professional jury or trial consultant retained  
10 in connection with this litigation.

11          2.12    Professional Vendors: persons or entities that provide litigation support services  
12 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
13 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

14 3.        SCOPE

15           The protections conferred by this Stipulation and Order cover not only Protected Material  
16 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
17 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
18 Parties or counsel to or in court or in other settings that might reveal Protected Material.

19 4.        DURATION

20           Even after the termination of this litigation, the confidentiality obligations imposed by this  
21 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
22 otherwise directs.

23 5.        DESIGNATING PROTECTED MATERIAL

24          5.1     Exercise of Restraint and Care in Designating Material for Protection. Each Party  
25 or non-party that designates information or items for protection under this Order must take care to  
26 limit any such designation to specific material that qualifies under the appropriate standards. A  
27 Designating Party must take care to designate for protection only those parts of material,  
28 documents, items, or oral or written communications that qualify – so that other portions of the

1 material, documents, items, or communications for which protection is not warranted are not  
2 swept unjustifiably within the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
4 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
5 unnecessarily encumber or retard the case development process, or to impose unnecessary  
6 expenses and burdens on other Parties), expose the Designating Party to sanctions. If it comes to a  
7 Party's or a non-party's attention that information or items that it designated for protection do not  
8 qualify for protection at all, or do not qualify for the level of protection initially asserted, that  
9 Party or non-party must promptly notify all other Parties that it is withdrawing the mistaken  
10 designation.

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

15 Designation in conformity with this Order requires:

16 (a) For information in documentary form (apart from transcripts of depositions or other  
17 pretrial or trial proceedings), that the Producing Party affix the legend:

18 CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

19 Case No. 2:15-CV-00351-JAM-AC

20 on each page that contains protected material.

21 A Party or non-party that makes original documents or materials available for inspection  
22 need not designate them for protection until after the inspecting Party has indicated which material  
23 it would like copied and produced. During the inspection and before the designation, all of the  
24 material made available for inspection shall be deemed "Confidential." After the inspecting Party  
25 has identified the documents it wants copied and produced, the Producing Party must determine  
26 which documents, or portions thereof, qualify for protection under this Order, then, before  
27 producing the specified documents, the Producing Party must affix the appropriate legend  
28 ("CONFIDENTIAL") on each page that contains Protected Material.

1 (b) No person shall attend portions of depositions pursuant to Federal Rules of Civil  
2 Procedure 30 or 45 at which Protected Material is disclosed unless such person is an authorized  
3 recipient under the terms of this Order. If, during the course of a deposition, the response to a  
4 question would require the disclosure of Protected Material, the witness may refuse to answer or  
5 the Party whose Protected Material would be disclosed may instruct the witness not to answer or  
6 not to complete the answer, as the case may be, until any persons not authorized to receive such  
7 information have left the room. For testimony given in deposition or in other pretrial or trial  
8 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the  
9 record, before the close of the deposition, hearing, or other proceeding, all protected testimony,  
10 and further specify any portions of the testimony that qualify as “Confidential.” This provision  
11 does not apply to Court proceedings. When it is impractical to identify separately each portion of  
12 testimony that is entitled to protection, and when it appears that substantial portions of the  
13 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
14 testimony may invoke on the record (before the deposition or proceeding is concluded) a right to  
15 have up to thirty (30) days after completion of the transcript of the deposition (as certified by a  
16 court reporter) to identify the lines and pages of the testimony as to which protection is sought,  
17 Only those portions of the testimony that are appropriately designated for protection within the  
18 thirty (30) days shall be covered by the provisions of this Stipulated Protective Order.

19 Transcript pages containing Protected Material must be separately bound by the court  
20 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” as instructed  
21 by the Party or nonparty offering or sponsoring the witness or presenting the testimony.

22 (c) for information produced in some form other than documentary, and for any other  
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
24 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only  
25 portions of the information or item warrant protection, the Producing Party, to the extent  
26 practicable, shall identify the protected portions.

27 5.3 Inadvertent Failures to Designate. If corrected within ten (10) days, an inadvertent  
28 failure to designate qualified information or items as “Confidential” does not, standing alone,

1 waive the Designating Party’s right to secure protection under this Order for such material. If  
2 material is appropriately designated as “Confidential” after the material was initially produced, the  
3 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
4 that the material is treated in accordance with the provisions of this Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
7 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
8 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
9 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
10 promptly after the original designation is disclosed.

11 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating  
12 Party’s confidentiality designation must do so in good faith and must begin the process by  
13 conferring in writing with counsel for the Designating Party. In conferring, the challenging Party  
14 must explain the basis for its belief that the confidentiality designation was not proper and must  
15 give the Designating Party an opportunity to review the designated material, to reconsider the  
16 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
17 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
18 has engaged in this meet and confer process first.

19 6.3 Judicial Intervention. The Challenging Party shall initiate the dispute resolution  
20 process by providing written notice of each designation it is challenging and describing the basis  
21 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
22 notice must recite that the challenge to confidentiality is being made in accordance with this  
23 specific paragraph of the Protective Order. Parties shall attempt to resolve each challenge in good  
24 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of  
25 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the  
26 Challenging Party must explain the basis for its belief that the confidentiality designation was not  
27 proper and must give the Designating Party an opportunity to review the designated material, to  
28 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for

1 the chosen designation. A Challenging Party may proceed to the next stage of the challenge  
2 process only if it has engaged in this meet and confer process first or establishes that the  
3 Designating Party is unwilling to participate in the meet and confer process in a timely manner.

4 If Parties cannot resolve a challenge without court intervention, the Designating Party shall  
5 file and serve a motion to retain confidentiality within 21 days of the initial notice of challenge or  
6 within 14 days of Parties agreeing that the meet and confer process will not resolve their dispute,  
7 whichever is later.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
10 produced by another Party or by a non-party in connection with this case only for prosecuting,  
11 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
12 the categories of persons and under the conditions described in this Order. When the litigation has  
13 been terminated, a Receiving Party must comply with the provisions of Section 11, below (FINAL  
14 DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a location and in  
16 a secure manner that ensures that access is limited to the persons authorized under this Order.

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
18 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
19 information or item designated CONFIDENTIAL only to:

20 (a) the Receiving Party’s Outside Counsel of record in this action, as well as  
21 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
22 litigation;

23 (b) House Counsel of the Receiving Party, as well as employees or agents of House  
24 Counsel, (1) to whom disclosure is reasonably necessary for this litigation;

25 (c) the officers, directors, and employees of the Receiving Party to whom disclosure is  
26 reasonably necessary for this litigation;

27 (d) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
28 reasonably necessary for this litigation;



- 1 (e) the Court and its personnel;
- 2 (f) court reporters, their staffs, and professional vendors to whom disclosure is
- 3 reasonably necessary for this litigation;
- 4 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
- 5 necessary. Pages of transcribed deposition testimony or exhibits to depositions that reveal
- 6 Protected Material must be separately bound by the court reporter and may not be disclosed to
- 7 anyone except as permitted under this Stipulated Protective Order;
- 8 (h) the author of the document or the original source of the information;
- 9 (i) witnesses interviewed by a party's representatives or counsel, where such
- 10 disclosure is reasonably necessary for the purpose of factual investigation, discovery or trial
- 11 preparation.

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER

13 LITIGATION.

14 If a Receiving Party is served with a subpoena or an order issued in other litigation that

15 could compel disclosure of any information or items designated in this action as

16 "CONFIDENTIAL" the Receiving Party must so notify the Designating Party, in writing (by

17 electronic mail or facsimile, if possible) immediately and in no event more than three (3) court

18 days after receiving the subpoena or order. Such notification must include a copy of the subpoena

19 or court order. The Receiving Party also must immediately inform in writing the Party who

20 caused the subpoena or order to issue in the other litigation that some or all the material covered

21 by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party

22 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action

23 that caused the subpoena or order to issue. The purpose of imposing these duties is to alert the

24 interested Parties to the existence of this Protective Order and to afford the Designating Party in

25 this case an opportunity to try to protect its confidentiality interests in the court from which the

26 subpoena or order issued. The Designating Party shall bear the burdens and the expenses of

27 seeking protection in that court of its confidential material – and nothing in these provisions

28 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a

1 lawful directive from another court.

2 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a party, through inadvertence, produces any Confidential Information without labeling or  
4 marking or otherwise designating it as such in accordance with this Order, the designating party  
5 may give written notice to the receiving party that the document or thing produced is deemed  
6 Confidential Information, and that the document or thing produced should be treated as such in  
7 accordance with that designation under this Order. The receiving party must treat the materials as  
8 confidential, once the designating party so notifies the receiving party. Counsel for Parties shall  
9 agree on a mutually acceptable manner of labeling or marking the inadvertently produced  
10 materials "CONFIDENTIAL." The Receiving Party must immediately (a) notify in writing the  
11 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of  
12 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
13 made of all the terms of this Order.

14 10. FILING PROTECTED MATERIAL.

15 Subject to public policy, and further court order, nothing shall be filed under seal, and the  
16 Court shall not be required to take any action, without separate prior order by the Judge before  
17 whom the hearing or proceeding will take place, after application by the affected party with  
18 appropriate notice to opposing counsel.

19 11. FINAL DISPOSITION.

20 Unless otherwise ordered or agreed in writing by the Producing Party, within thirty (30)  
21 days of the conclusion of the trial and of any appeals, each Receiving Party must return all  
22 Protected Material to the Producing Party. As used in this subdivision, "all Protected Material"  
23 includes all copies, abstracts, compilations, summaries or any other form of reproducing or  
24 capturing any of the Protected Material. With permission in writing from the Designating Party,  
25 the Receiving Party may destroy some or all of the Protected Material instead of returning it. Any  
26 documents, papers, disks, diskettes, thumb drives or other tangible things that include or contain  
27 information derived from confidential information shall be destroyed, except that privileged  
28 documents and information in court transcripts derived from Protected Material need not be

1 destroyed. Whether the Protected Material is returned or destroyed, the Receiving Party must  
2 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
3 Designating Party) by the thirty (30) day deadline that identifies (by category, where appropriate)  
4 all the Protected Material that was returned or destroyed and that affirms that the Receiving Party  
5 has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or  
6 capturing any of the Protected Material.

7 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
8 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,  
9 even if such materials contain Protected Material. Any such archival copies that contain or  
10 constitute Protected Material remain subject to this Protective Order as set forth in Section 4  
11 (DURATION), above.

12 12. EXCEPTIONS

13 12.1 Nothing herein shall prohibit a party, or its counsel of record, from disclosing a  
14 document containing confidential information to the person the document identifies as an author  
15 or recipient of such document, or to any person (including third party witnesses) for which prior  
16 written approval for disclosure has been granted by the Producing Party. A Party's use for any  
17 purpose of its own documents, which that Party produces in this action, shall not be considered a  
18 violation of this Order.

19 12.2 Notwithstanding any other provision of this Order to the contrary, the  
20 confidentiality obligations of this Order shall not apply, or shall cease to apply, to any information  
21 that:

22 (a) at the time of disclosure hereunder, was already lawfully in possession of the  
23 Receiving Party and was not acquired through discovery or under any obligation of  
24 confidentiality; or

25 (b) after disclosure hereunder, was lawfully acquired by the Receiving Party from a  
26 third party lawfully possessing the same and having no obligation to maintain the confidentiality  
27 of the information.

28

1 13. MISCELLANEOUS

2 13.1 Use of Email. Transmission by email is acceptable for all notification purposes  
3 herein.

4 13.2 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
5 its modification by the Court in the future. This Order may be modified by agreement of Parties,  
6 subject to approval by the Court. The Court may modify the terms and conditions of this Order  
7 for good cause, or in the interest of justice, or on its own order at any time in these proceedings.  
8 Parties prefer that the Court provide them with notice of the Court's intent to modify the Order  
9 and the content of those modifications, prior to entry of such an order.

10 13.3 Right to Assert Other Objections. By stipulating to the entry of this Protective  
11 Order no Party waives any right:

12 (a) to apply to the Court for a protective order relating to any confidential information  
13 for use at trial or relating to any discovery in this litigation;

14 (b) to object to the production of documents it considers not subject to discovery; or

15 (c) to apply to the Court for an order compelling production of documents

16 13.4 In the event anyone shall violate or thereafter violate any terms of this Order, the  
17 aggrieved Party may seek any remedy permitted by law, including but not limited to sanctions for  
18 contempt, damages for injunctive relief, and it shall not be a defense to request for injunctive relief  
19 that the aggrieved Party possesses an adequate remedy at law.

20 13.5 All persons subject to the terms of this Order agree that this Court shall retain  
21 jurisdiction over them for the purpose of enforcing this Order.

22

23 **IT IS SO STIPULATED**, this 29th day of July 2015.

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: July 30, 2015

HOOPER, LUNDY & BOOKMAN, P.C.

By: \_\_\_\_\_ / s /  
KATHERINE M. DRU  
Attorneys for Plaintiffs NUTRISHARE, INC.,  
PATIENT ONE, PATIENT TWO, and PATIENT  
THREE

Dated: July 29, 2015

GORDON & REES LLP

By: \_\_\_\_\_ / s /  
Ronald K. Alberts  
Jordan S. Altura  
Tino X. Do  
Attorneys For Defendants CONNECTICUT  
GENERAL LIFE INSURANCE COMPANY and  
CIGNA HEALTH AND LIFE INSURANCE  
COMPANY

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: 7/30/2015

/s/ John A. Mendez

\_\_\_\_\_  
Honorable John A. Mendez  
United States District Court Judge