

1 WHEREAS, discovery in the above-entitled matter may involve the
2 production of documents containing trade secrets, confidential commercial,
3 personal, or financial information, or protected health information and may
4 otherwise require disclosure of such information;

5 WHEREAS, Plaintiff SAN JOAQUIN GENERAL HOSPITAL (“San
6 Joaquin” or “Plaintiff”) and Defendant, UNITED HEALTHCARE INSURANCE
7 CO., (“UHC” or “Defendant”) acknowledge and agree that it is appropriate to
8 provide safeguards to prevent the public dissemination of such confidential
9 information, to establish procedures to limit the necessity for objections or
10 subsequent motions regarding discovery, and to facilitate disposition of any
11 discovery disputes that may arise; and

12 WHEREAS, the Parties have agreed to the entry of this Stipulated Protective
13 Order, as evidenced by the signatures of their respective counsel;

14 IT HEREBY IS STIPULATED and agreed, as follows:

15 1. As used herein, “Confidential Information” shall mean any document
16 or information in any form, or any portion thereof, designated and supplied by one
17 Party or a third party (“Designating Party”) to another Party or third party
18 (“Receiving Party”) in this action, which contains confidential business, financial,
19 personal, health, proprietary, trade secret or commercial data of a sensitive nature
20 and which is designated as Confidential Information for purposes of this litigation
21 by the Party or third party producing it. A designation by a Party or third party of
22 Confidential Information shall constitute a representation that counsel believes in
23 good faith that the information constitutes Confidential Information. The Parties
24 shall make a good faith effort to designate information so as to provide the
25 requisite level of disclosure possible within the parameters of the discovery
26 requested but still preserve confidentiality as appropriate.

27 2. All documents, information or materials designated as Confidential
28 Information shall be treated as such for purposes of this Stipulated Protective

1 Order, provided, however, that by agreeing to this Stipulated Protective Order, no
2 Party waives the right to challenge any other Party's designation of any document
3 or other material as Confidential Information. The Parties expressly understand
4 and agree that certain documents and information relevant to the claims and
5 defenses in this action may contain information that is subject to the Standards of
6 Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and
7 164, promulgated pursuant to the Health Insurance Portability and Accountability
8 Act of 1996 ("HIPAA"); or other similar statutory or regulatory privacy
9 protections. The Parties agree that, once adopted, this Stipulated Protective Order
10 will constitute a Qualified Protective Order under 45 CFR 164.512(e).

11 3. Any Confidential Information supplied in written or documentary
12 form shall be labeled by the Designating Party as "Confidential". With respect to
13 the examination of witnesses upon oral deposition, when Confidential Information
14 is supplied and/or when the deponent's testimony contains, reflects or relates in
15 any way to Confidential Information, the reporter will be informed of this
16 Stipulated Protective Order by the Party seeking confidentiality and will be
17 required to operate in a manner consistent therewith. The reporter shall place on
18 the cover of any deposition transcript which contains any Confidential Information
19 the words "Contains Confidential Information Pursuant to Protective Order."
20 Counsel for the respective Parties shall take appropriate steps to prevent any
21 portions of any deposition transcript designated "Confidential" from being
22 disclosed to any person except as provided in this Stipulated Protective Order.
23 Each Designating Party shall provide the other Party with a list of the page(s) of
24 each deposition transcript and any exhibits attached thereto that the Party has
25 designated as "Confidential" within thirty (30) days of receipt by counsel of the
26 transcript unless otherwise agreed. Until the earlier of thirty (30) days or the
27 Designating Party's having provided such a listing of pages, the other Party shall
28 maintain the entire deposition transcript and exhibits as "Confidential." Any

1 documents designated “Confidential” which are made part of the transcript of such
2 documents on which examination is taken during depositions shall maintain their
3 character as Confidential under the terms of this agreement without further the
4 necessity of further designation as such.

5 4. All Confidential Information shall be maintained in confidence, and
6 not disclosed, directly or indirectly, including the very fact of production of
7 Confidential Information, to any person except as provided in this Paragraph:

8 (a) directors, officers and employees of the Party to whom it is
9 necessary that the materials be shown for purposes of this legal action;

10 (b) counsel for the Party, whether or not counsel of record in this
11 proceeding (including members and employees of such counsel’s law firm), and
12 in-house counsel for the Party;

13 (c) persons employed by the Party’s attorney to furnish expert and
14 litigation support services;

15 (d) pursuant to the restrictions set forth in Paragraph 7 of this
16 Stipulated Protective Order, deponents incident to their depositions;

17 (e) such other persons as hereafter may be designated by written
18 agreement of the Parties or by order of the Court.

19 Said access shall be for the sole limited purposes of settlement negotiations, trial or
20 preparation for trial of this action.

21 5. Confidential information may be further designated “HIGHLY
22 RESTRICTED CONFIDENTIAL INFORMATION: ATTORNEYS’ AND
23 EXPERTS’ EYES ONLY” by marking each document containing such
24 information with the legend “Highly Restricted Confidential Information:
25 Attorneys' and Experts' Eyes Only” (hereinafter referred to as “Highly Restricted
26 Information”) in the same manner and within the same time limitations as the
27 marking of such information as “Confidential” set forth in paragraph 3. All
28 documents or things designated as “Highly Restricted Confidential Information:

1 Attorneys' and Experts' Eyes Only" are included within the meaning of
2 "Confidential Information" as used in this Order and all provisions of this Order
3 applying to Confidential Information shall apply to Restricted Information. Highly
4 Restricted Information shall be given, shown, disclosed, made available, or
5 communicated only to the persons identified in subparagraphs 4(b)-(f) above
6 except that Highly Restricted Information may not be disclosed to any of the
7 recipient's officers, directors, or employees.

8 (a) To the extent that certain Highly Restricted Information, by
9 their terms, may require written consent of third parties before disclosure, the
10 parties agree that the producing party may seek and obtain an Order of Production
11 from the presiding judge of the Action in order to protect themselves from liability.

12 (b) If a recipient of any Highly Restricted Information wishes to
13 file any documents designated as such in Court or to offer any of them into
14 evidence or otherwise disclose them during the course of any legal proceeding
15 herein for any such purpose, the parties must first meet and confer to allow the
16 producing party to redact highly sensitive information as necessary.

17 (c) If a recipient of any Highly Restricted Information wishes to
18 have the presiding judge of the Action review or see Highly Restricted Information
19 (for the purposes of challenging such redactions or otherwise) that are not redacted
20 as set forth in the preceding paragraph, then the recipient must first obtain an order
21 from the Court that the unredacted documents shall be sealed.

22 6. Confidential Information held by a Party may be disclosed to persons
23 as provided in Paragraph 4 and to persons who are employed or otherwise bound
24 by counsel to furnish expert services, to give expert testimony, or otherwise to aid
25 in the preparation for trial of this action, provided that prior to such disclosure such
26 person to whom disclosure of Confidential Information is to be made shall
27 acknowledge and confirm in the form of a Declaration, in the form attached hereto
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1 as Exhibit "A," that he or she has read this Stipulated Protective Order and agrees
2 to comply with its terms.

3 7. Confidential Information designated by a Party as "Confidential" may
4 be disclosed by any other Party to a deponent during the deponent's deposition
5 provided that the deponent has been informed of this Stipulated Protective Order
6 and executes a Declaration, in the form attached hereto as Exhibit "A," that he or
7 she has read this Stipulated Protective Order and agrees to comply with its terms.
8 The attorneys for the respective Parties shall maintain a file of such Declarations.
9 The file containing these Declarations shall not be available for review absent an
10 agreement by the Parties or an order of the Court determining that there is good
11 cause for the Declarations to be reviewed.

12 8. Information or documents produced in this matter prior to the
13 execution of this Stipulated Protective Order (hereinafter "Previously Produced
14 Information") that have not previously been designated confidential may be
15 designated as Confidential Information as follows: not later than (10) days after the
16 execution of this Stipulated Protective Order by both parties, the Designating Party
17 shall notify in writing all recipients of the Previously Produced Information of the
18 material's designation as Confidential Information. The Designating Party shall
19 specifically identify, by reference to document title, page number and/or any alpha
20 or numeric production designation (such as Bates number), the material being
21 designated as Confidential Information. The Parties agree that all Previously
22 Produced Information so identified shall be treated as Confidential Information in
23 all respects, as though it had been designated and marked as such hereunder. Any
24 party may object to the designation of any such document(s) as Confidential
25 Information using the procedure set forth in paragraph 9 below.

26 9. In the event a Party inadvertently fails to designate information or
27 documents as Confidential Information when copies are produced to another Party
28 after the execution of this Stipulated Protective Order, the Designating Party shall

1 diligently notify in writing all recipients of the information or document of the
2 material's designation as Confidential Information. The Designating Party shall
3 specifically identify, by reference to document title, page number and/or any alpha
4 or numeric production designation (such as Bates number), the material being
5 designated as Confidential Information. The Designating Party shall have the right
6 to recover all copies of the Confidential Information and apply the Confidential
7 designation and the Receiving Party shall return to the Designating Party all copies
8 of the unlabeled Confidential Information inadvertently or unintentionally
9 disclosed. The inadvertent, unintentional or *in camera* disclosure of confidential
10 documents and information shall not, under any circumstances, be deemed a
11 waiver, in whole or in part, of any Party's claims of confidentiality.

12 10. If any Party objects to the designation of materials being marked as
13 Confidential Information, the Party shall state the objection by letter to all counsel
14 of record in this case. If the Parties are unable to resolve the objection, any Party
15 may move the Court for an Order that the challenged material does not qualify as
16 Confidential Information under the terms of this agreement. In any such
17 proceeding, the Designating Party shall bear the burden of proof for demonstrating
18 that the material is Confidential. Until the Court rules on the objection, the
19 disputed material shall be treated as Confidential Information. Neither Party shall
20 be obliged to challenge the propriety of a designation of material as Confidential
21 Information, and the failure to do so shall not preclude a subsequent attack on the
22 propriety of such designation, unless prejudice can be shown by the Designating
23 Party to have resulted from the delay in challenging the designation,

24 11. A Designating Party requesting that a record be filed under seal must
25 file a noticed motion for an order sealing such specific records in compliance with
26 Local Rule of Court 141(b).

27 12. If a Party intends to file, quote, or otherwise reference in any manner
28 Confidential information or material or reveal the contents of records designated as

1 Confidential pursuant to this Order in connection with any discovery motion, the
2 Party shall meet and confer with the designating Party prior to the informal
3 discovery conference required by the Court before filing any discovery motion,
4 and shall also bring all such materials to the informal discovery conference and be
5 prepared to discuss them off the record with the Court and the designating Party, so
6 that the Parties can reach agreement, and/or the Court provide direction on how
7 and in what manner such Confidential information, material, or records will be
8 presented in connection with any actual discovery motion filed to avoid reference
9 in the public record to such Confidential information, material, or records and/or to
10 provide the designating Party with an appropriate opportunity to move to seal such
11 information, records, or material.

12 13. Nothing in this Protective Order supplants, modifies or in any way
13 violates the requirements and procedures for the sealing of records contained with
14 Local Rule of Court 141.

15 14. In the event that the Receiving Party is served with legal process,
16 other than an order of a court or tribunal, seeking the production of Confidential
17 Information obtained through discovery in this litigation and protected thereunder,
18 the Receiving Party shall promptly notify the Designating Party whose
19 Confidential Information is sought by service of the legal process and afford the
20 Designating Party a reasonable opportunity to object to the production of the
21 Confidential Information. The Receiving Party shall not produce any Confidential
22 Information in response to the legal process, except as ordered by a court or a
23 tribunal, until the Designating Party has had an opportunity to object to such
24 process and either declined to object or has had an objection overruled and appeals
25 therefrom exhausted. Designating party must lodge such objections with sufficient
26 time to allow Receiving Party to comply with its legal duties to properly respond to
27 such request.

1 15. By entering into this Stipulated Protective Order, neither Party waives
2 any objections it may have to the production of any documents covered by this
3 Stipulated Protective Order.

4 16. The provisions of this Stipulated Protective Order apply to all
5 proceedings in this matter, including all appeals and proceedings upon remand.
6 These obligations of confidentiality and non-disclosure shall survive the
7 conclusion of this action.

8 17. The provisions of this Protective Order shall apply retroactively to all
9 documents and information previously exchanged by either party to this action. To
10 the extent not already designated as Confidential, the producing party can
11 designate any and all documents produced and/or provided as Confidential or
12 Confidential Health Information within thirty (30) days of the execution of this
13 Stipulated Protective Order.

14 18. Within ninety (90) days following the termination of this action
15 through settlement or adjudication, including all appeals, upon written request all
16 Confidential Information designated as such by the Designating Party shall be
17 returned to the Designating Party, or destroyed, and all copies, summaries or
18 transcripts thereof, and any and all other documents which contain, reflect, refer or
19 relate to such Confidential Information which are not delivered to the Designating
20 Party, shall be destroyed. Upon written request counsel of record for each Party
21 shall attest to compliance with the terms of this Paragraph in an affidavit or
22 declaration served on each other Party within the 90-day period. This Paragraph
23 shall not preclude counsel from maintaining a file copy of any pleading or hearing
24 transcript that contains or attaches Confidential Information.

25 19. Nothing in the foregoing provisions regarding confidentiality shall
26 prevent or otherwise restrict counsel from rendering advice to their clients and, in
27 the course thereof, relying generally on examination of Confidential Information,
28 provided, however, that in rendering such advice and otherwise communicating

1 with such clients, counsel shall not make specific disclosure of any item so
2 designated except pursuant to the foregoing provisions.

3 20. Nothing in this Stipulated Protective Order shall prevent a Party from
4 independently obtaining publicly available information, including the final version
5 of documents actually filed with any Federal, State, County or local legislature,
6 regulatory authority, agency or court, nor shall this Stipulated Protective Order
7 constitute a restriction on information independently obtained, even if a copy of a
8 document independently obtained is otherwise provided in the Action and
9 designated as Confidential Information. Use of any independently obtained
10 documents shall be subject to any confidentiality or other restrictions regarding the
11 use or distribution of such documents imposed by the relevant authority or by law.

12 21. If a Party, through inadvertence, produces any document or
13 information that it believes is protected from discovery pursuant to the attorney-
14 client privilege or work product doctrine, such production shall not be deemed a
15 waiver of any privilege or protection, and the producing Party may give prompt
16 written notice to the Receiving Party that the document or information produced is
17 deemed privileged or protected and that return of the document or information is
18 requested. Upon receipt of such written notice, the Receiving Party shall
19 immediately gather the original and all copies of the document or information of
20 which the Receiving Party is aware and shall immediately return the original and
21 all such copies to the producing Party.

22 22. This Stipulated Protective Order may be modified by written
23 agreement of counsel for the Parties, provided that any such agreement be
24 memorialized in the form of a stipulation that shall be filed and approved by the
25 Court.

26 23. The Stipulated Protective Order may be executed in counterparts, each
27 when taken together with the others, shall constitute a whole, as if executed
28 simultaneously on the same document.

1 Dated: January 6, 2017

2 SEDGWICK LLP

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5 EDWARD STUMP
6 Attorneys for Defendant
7 UNITED HEALTHCARE INSURANCE
8 CO.
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ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Protective Order.

IT IS SO ORDERED.

Dated: January 17, 2017.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

CERTIFICATION RE: CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____[NAME],

_____ [POSITION AND EMPLOYER],

am about to receive confidential information supplied in connection with the court action *SAN JOAQUIN GENERAL HOSPITAL, a department of the County of San Joaquin, a political subdivision of the State of California vs. UNITED HEALTHCARE INSURANCE CO.*, United States District Court Case No. 2:16-CV-01904-KJM-EFB (the “Action”). I certify that I understand that this Confidential Information is provided to me subject to the terms and restrictions of the Protective Order filed in this Action. I have been given a copy of the Protective Order; I have read it; and I agree to be bound by its terms. I understand that Confidential Information, as defined in the Protective Order, including any notes or other records that may be made regarding any such materials, shall not be disclosed to anyone except as expressly permitted by the Protective Order.

DATED: _____