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14 UNITED STATES DISTRICT COURT  
 15 EASTERN DISTRICT OF CALIFORNIA

16 PATRICIA TROST,  
 17 Plaintiff,  
 18  
 19 v.  
 20 NORTHBAY HEALTHCARE  
 CORPORATION, and DOES 1 to 100,  
 21 Defendant.

Case No. 2:16-CV-02732 KJM EFB

**STIPULATED PROTECTIVE ORDER  
 FOR STANDARD LITIGATION**

1                   1.       PURPOSES AND LIMITATIONS

2                   Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures  
7 or responses to discovery and that the protection it affords from public disclosure and use extends  
8 only to the limited information or items that are entitled to confidential treatment under the  
9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that  
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
11 Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied  
12 when a party seeks permission from the court to file material under seal.

13                   2.       DEFINITIONS

14                   2.1       Challenging Party: a Party or Non-Party that challenges the designation of  
15 information or items under this Order.

16                   2.2       “CONFIDENTIAL” Information or Items: information (regardless of how it  
17 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
18 of Civil Procedure 26(c).

19                   2.3       Counsel (without qualifier): Outside Counsel of Record and House Counsel  
20 (as well as their support staff).

21                   2.4       Designating Party: a Party or Non-Party that designates information or items  
22 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23                   2.5       Disclosure or Discovery Material: all items or information, regardless of the  
24 medium or manner in which it is generated, stored, or maintained (including, among other things,  
25 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
26 responses to discovery in this matter.

27                   2.6       Expert: a person with specialized knowledge or experience in a matter  
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert

1 witness or as a consultant in this action.

2 2.7 House Counsel: attorneys who are employees of a party to this action. House  
3 Counsel does not include Outside Counsel of Record or any other outside counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or other  
5 legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party to  
7 this action but are retained to represent or advise a party to this action and have appeared in this  
8 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that  
9 party.

10 2.10 Party: any party to this action, including all of its officers, directors,  
11 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
13 Material in this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support  
15 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
16 organizing, storing, or retrieving data in any form or medium) and their employees and  
17 subcontractors.

18 2.13 Protected Material: any Disclosure or Discovery Material that is designated  
19 as "CONFIDENTIAL."

20 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from  
21 a Producing Party.

### 22 3. SCOPE

23 The protections conferred by this Stipulation and Order cover not only Protected  
24 Material (as defined above), but also (1) any information copied or extracted from Protected  
25 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
26 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
27 Material. However, the protections conferred by this Stipulation and Order do not cover the  
28 following information: (a) any information that is in the public domain at the time of disclosure to a

1 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a  
2 result of publication not involving a violation of this Order, including becoming part of the public  
3 record through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
4 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
5 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
6 Protected Material at trial shall be governed by a separate agreement or order.

#### 7 4. DURATION

8 Even after final disposition of this litigation, the confidentiality obligations imposed  
9 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
10 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims  
11 and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
12 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
13 including the time limits for filing any motions or applications for extension of time pursuant to  
14 applicable law.

#### 15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
17 Party or Non-Party that designates information or items for protection under this Order must take  
18 care to limit any such designation to specific material that qualifies under the appropriate standards.  
19 The Designating Party must designate for protection only those parts of material, documents, items,  
20 or oral or written communications that qualify – so that other portions of the material, documents,  
21 items, or communications for which protection is not warranted are not swept unjustifiably within  
22 the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
24 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
25 unnecessarily encumber or retard the case development process or to impose unnecessary expenses  
26 and burdens on other parties) expose the Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it  
28 designated for protection do not qualify for protection, that Designating Party must promptly notify

1 all other Parties that it is withdrawing the mistaken designation.

2           5.2     Manner and Timing of Designations. Except as otherwise provided in this  
3 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
4 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
5 designated before the material is disclosed or produced.

6           Designation in conformity with this Order requires:

7           (a) for information in documentary form (e.g., paper or electronic documents, but  
8 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
9 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion  
10 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
11 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

12           A Party or Non-Party that makes original documents or materials available for  
13 inspection need not designate them for protection until after the inspecting Party has indicated which  
14 material it would like copied and produced. During the inspection and before the designation, all of  
15 the material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting  
16 Party has identified the documents it wants copied and produced, the Producing Party must  
17 determine which documents, or portions thereof, qualify for protection under this Order. Then,  
18 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”  
19 legend to each page that contains Protected Material. If only a portion or portions of the material on  
20 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
21 (e.g., by making appropriate markings in the margins).

22           (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
23 Designating Party identify on the record, before the close of the deposition, hearing, or other  
24 proceeding, all protected testimony.

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

1 practicable, shall identify the protected portion(s).

2           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
3 to designate qualified information or items does not, standing alone, waive the Designating Party's  
4 right to secure protection under this Order for such material. Upon timely correction of a  
5 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
6 accordance with the provisions of this Order.

7           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

8           6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation  
9 of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
11 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
12 confidentiality designation by electing not to mount a challenge promptly after the original  
13 designation is disclosed.

14           6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
15 process by providing written notice of each designation it is challenging and describing the basis for  
16 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
17 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
18 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
19 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
20 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
21 Party must explain the basis for its belief that the confidentiality designation was not proper and  
22 must give the Designating Party an opportunity to review the designated material, to reconsider the  
23 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
24 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
25 has engaged in this meet and confer process first or establishes that the Designating Party is  
26 unwilling to participate in the meet and confer process in a timely manner.

27           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
28 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Local

1 Rule 230 (and in compliance with Local Rule 141, if applicable) within 21 days of the initial notice  
2 of challenge or within 14 days of the parties agreeing that the meet and confer process will not  
3 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent  
4 declaration affirming that the movant has complied with the meet and confer requirements imposed  
5 in the preceding paragraph. Failure by the Designating Party to make such a motion including the  
6 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the  
7 confidentiality designation for each challenged designation. In addition, the Challenging Party may  
8 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,  
9 including a challenge to the designation of a deposition transcript or any portions thereof. Any  
10 motion brought pursuant to this provision must be accompanied by a competent declaration  
11 affirming that the movant has complied with the meet and confer requirements imposed by the  
12 preceding paragraph.

13           The burden of persuasion in any such challenge proceeding shall be on the  
14 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or  
15 impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
16 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a  
17 motion to retain confidentiality as described above, all parties shall continue to afford the material in  
18 question the level of protection to which it is entitled under the Producing Party's designation until  
19 the court rules on the challenge.

## 20           7.       ACCESS TO AND USE OF PROTECTED MATERIAL

21           7.1     Basic Principles. A Receiving Party may use Protected Material that is  
22 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
24 disclosed only to the categories of persons and under the conditions described in this Order. When  
25 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13  
26 below (FINAL DISPOSITION).

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

1           7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated “CONFIDENTIAL” only to:

4           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation;

7           (b) the officers, directors, and employees (including House Counsel) of the  
8 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed  
9 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10           (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
11 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
12 to Be Bound” (Exhibit A);

13           (d) the court and its personnel;

14           (e) court reporters and their staff, professional jury or trial consultants, mock jurors,  
15 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who  
16 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17           (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
18 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
19 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
20 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
21 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
22 Stipulated Protective Order.

23           (g) the author or recipient of a document containing the information or a custodian or  
24 other person who otherwise possessed or knew the information.

25           8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
26 IN OTHER LITIGATION

27           If a Party is served with a subpoena or a court order issued in other litigation that  
28 compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that

1 Party must:

2 (a) promptly notify in writing the Designating Party. Such notification shall include a  
3 copy of the subpoena or court order;

4 (b) promptly notify in writing the party who caused the subpoena or order to issue in  
5 the other litigation that some or all of the material covered by the subpoena or order is subject to this  
6 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
8 Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the  
10 subpoena or court order shall not produce any information designated in this action as  
11 “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued,  
12 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear  
13 the burden and expense of seeking protection in that court of its confidential material – and nothing  
14 in these provisions should be construed as authorizing or encouraging a Receiving Party in this  
15 action to disobey a lawful directive from another court.

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
17 PRODUCED IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-Party in  
19 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
20 connection with this litigation is protected by the remedies and relief provided by this Order.  
21 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional  
22 protections.

23 (b) In the event that a Party is required, by a valid discovery request, to produce a  
24 Non-Party’s confidential information in its possession, and the Party is subject to an agreement with  
25 the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party that some or  
27 all of the information requested is subject to a confidentiality agreement with a Non-Party;

28 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in

1 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
2 information requested; and

3 (3) make the information requested available for inspection by the Non-Party.

4 (c) If the Non-Party fails to object or seek a protective order from this court within  
5 14 days of receiving the notice and accompanying information, the Receiving Party may produce the  
6 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely  
7 seeks a protective order, the Receiving Party shall not produce any information in its possession or  
8 control that is subject to the confidentiality agreement with the Non-Party before a determination by  
9 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of  
10 seeking protection in this court of its Protected Material.

#### 11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
13 Protected Material to any person or in any circumstance not authorized under this Stipulated  
14 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party  
15 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
16 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of  
17 all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment  
18 and Agreement to Be Bound" that is attached hereto as Exhibit A.

#### 19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 20 PROTECTED MATERIAL

21 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
22 produced material is subject to a claim of privilege or other protection, the obligations of the  
23 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
24 is not intended to modify whatever procedure may be established in an e-discovery order that  
25 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)  
26 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or  
27 information covered by the attorney-client privilege or work product protection, the parties may  
28 incorporate their agreement in the stipulated protective order submitted to the court.

1                   12.    MISCELLANEOUS

2                   12.1   Right to Further Relief. Nothing in this Order abridges the right of any person  
3 to seek its modification by the court in the future.

4                   12.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
5 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
6 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
7 Party waives any right to object on any ground to use in evidence of any of the material covered by  
8 this Protective Order.

9                   12.3   Filing Protected Material. Without written permission from the Designating  
10 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
11 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
12 Protected Material must comply with Local Rule 141. Protected Material may only be filed under  
13 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
14 Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing that the  
15 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
16 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant  
17 to Local Rule 141 is denied by the court, then the Receiving Party may file the information in the  
18 public record unless otherwise instructed by the court.

19                   13.    FINAL DISPOSITION

20                   Within 60 days after the final disposition of this action, as defined in paragraph 4,  
21 each Receiving Party must return all Protected Material to the Producing Party or destroy such  
22 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,  
23 compilations, summaries, and any other format reproducing or capturing any of the Protected  
24 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a  
25 written certification to the Producing Party (and, if not the same person or entity, to the Designating  
26 Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected  
27 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any  
28 copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the

1 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of  
2 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
3 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
4 and expert work product, even if such materials contain Protected Material. Any such archival copies  
5 that contain or constitute Protected Material remain subject to this Protective Order as set forth in  
6 Section 4 (DURATION).

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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9

10 Dated: March 1, 2017  
11

12 /s/ Michael J. Hui  
13 R. BRIAN DIXON  
14 LAURA E. HAYWARD  
15 MICHAEL J. HUI  
16 LITTLER MENDELSON, P.C.  
17 Attorneys for Defendant  
18 NORTHBAY HEALTHCARE  
19 CORPORATION

20 Dated: March 1, 2017  
21

22 /s/ Arkady Itkin  
23 ARKADY ITKIN  
24 LAW OFFICE OF A. ITKIN  
25 Attorneys for Plaintiff  
26 PATRICIA TROST

## 27 ORDER

28 The court GRANTS the parties' request with the exception of Paragraph 12.3, which  
does not comply with the court's standing order. Paragraph 12.3 is replaced with the following:

In the event a party seeks to file any Protected Materials designated as  
CONFIDENTIAL and therefore potentially subject to sealing, the  
filing party shall provide the producing party with sufficient notice in  
advance of filing to allow for the seeking of an order of sealing or  
redaction from the court. All requests to seal or redact shall be  
governed by Civil Local Rule 141 ("Sealing of Documents") and  
Local Rule 140 ("Privacy Concerns and Redaction"). No Protected  
Materials may be filed under seal and no redacted Protected Materials  
may be filed without prior approval of the court.

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PURSUANT TO STIPULATION AS AMENDED, IT IS SO ORDERED.

Dated: June 27, 2017.

  
UNITED STATES DISTRICT JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of \_\_\_\_\_ [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_