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 14 **UNITED STATES DISTRICT COURT**
 15 **EASTERN DISTRICT OF CALIFORNIA**

16 UNITED STATES OF AMERICA *et al. ex rel.*
 17 JEFFREY MAZIK,

18 Plaintiffs,

19 v.

20 KAISER FOUNDATION HEALTH PLAN,
 21 INC. et al.,

22 Defendants.

Case No. 2:19-cv-0559-DAD-KJN

**JOINT STIPULATION AND
 PROTECTIVE ORDER GOVERNING
 TREATMENT OF PROTECTED
 MATERIAL**

1 PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action is likely to involve production of
3 confidential information, proprietary information, Personally Identifiable Information, Protected
4 Health Information, and certain other private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this action may be warranted.
6 Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated
7 Protective Order. The Parties acknowledge that this Stipulated Protective Order does not confer
8 blanket protections on all disclosures or responses to discovery and that the protection it affords
9 from public disclosure and use extends only to the limited information or items that are entitled to
10 confidential treatment under the applicable legal principles.

11 The Parties further acknowledge, as set forth in Section 13.3, below, that this Stipulated
12 Protective Order does not entitle them to file confidential information under seal; Civil Local Rule
13 141 sets forth the procedures that must be followed and the standards that will be applied when a
14 Party seeks permission from the Court to file material under seal.

15 DEFINITIONS

16 2.1 Challenging Party: a Party that challenges the designation of information or items
17 under this Stipulated Protective Order.

18 2.2 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their
19 support staff).

20 2.3 Designating Party: a Party or Non-Party that designates information or items that it
21 produces in disclosures or in responses to discovery as “CONFIDENTIAL,” “ATTORNEYS’
22 EYES ONLY,” or “HIGHLY CONFIDENTIAL.”

23 2.4 Disclosures or Discovery Material: any and all produced materials, including
24 documents, data, information, electronically-stored information (“ESI”) and tangible things in the
25 broadest sense contemplated by the Federal Rules of Civil Procedure, and shall include all written,
26 oral, recorded, electronic, or graphic material, however produced or reproduced, including, but not
27 limited to all written or printed matter of any kind, computer data of any kind, graphic or manual
28 records or representations of any kind, and electronic, or mechanical records produced or provided

1 in the course of this action by the Parties subject to this Stipulated Protective Order, and Non-
2 Parties subject to this Stipulated Protective Order, including materials obtained by Relator,
3 deposition testimony and exhibits thereto, deposition transcripts or videos, and answers and
4 responses to interrogatories, answers and responses to requests for production or admissions, and
5 answers and responses to other discovery requests and subpoenas.

6 2.5 Expert: a person with specialized knowledge or experience in a matter pertinent to
7 the litigation of this action who has been retained by a Party or its Counsel to serve as an expert
8 witness or as a consultant in this action.

9 2.6 House Counsel: attorneys who are employees of a Party to this action.

10 2.7 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity that is not named as a Party to this action and is not otherwise owned, operated or controlled,
12 in whole or in part, by a Party to this action.

13 2.8 Outside Counsel: attorneys and personnel from outside law firms that the Parties
14 have engaged to represent or advise in this action and have appeared in this action.

15 2.9 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and Outside Counsel, including their support staff.

17 2.10 Personally Identifiable Information or PII: Social Security numbers, tax
18 identification numbers, birth dates, and financial account numbers for which redacted filings are
19 permitted by Rule 5.2 of the Federal Rules of Civil Procedure.

20 2.11 Producing Party: a Party or Non-Party that produces Disclosures or Discovery
21 Material in this action.

22 2.12 Protected Health Information or PHI: certain individually identifiable health
23 information (defined as health information that is connected to a patient's name, address, Social
24 Security number, or other identifying number, including HIC number) that may be subject to the
25 Privacy Act, 5 U.S.C. § 552a, to the provisions of 45 C.F.R. §§ 164.102-164.534, to the provisions
26 of 42 U.S.C. § 1306, or for which there may be no waiver by the patient to disclose the information
27 to a person who or entity which is not a Party to the above-captioned action. The Parties or Non-
28 Parties may produce PHI in accordance with this Stipulated Protective Order pursuant to their

1 obligations to make disclosures under Federal Rule of Civil Procedure 26(a) and in response to
2 discovery requests in this action. All individually identifiable health information shall be designated
3 “CONFIDENTIAL” and may be used and/or disclosed in accordance with the terms of this
4 Stipulated Protective Order and 45 C.F.R. § 164.512(e)(1)(v).

5 2.13 Professional Vendors: persons or entities that provide litigation support services
6 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
7 storing, or retrieving data in any form or medium) and their employees and subcontractors.

8 2.14 Proprietary Information: information not already publicly available that constitutes:
9 (a) any information subject to protection under the Privacy Act, 5 U.S.C. § 552a, or the Trade
10 Secrets Act, 18 U.S.C. § 1905; (b) trade secret or other confidential research, development, or
11 commercial information entitled to protection under Federal Rule of Civil Procedure 26(c)(1)(G);
12 or (c) any other information subject to a sealing in the above-captioned action pursuant to Civil
13 Local Rule 141.

14 2.15 Protected Material: any Disclosures or Discovery Material that is designated as
15 “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL.”

16 2.16 Receiving Party: a Party that receives Disclosures or Discovery Material from a
17 Producing Party.

18 2.17 Information designated as “CONFIDENTIAL” pursuant to this Stipulated
19 Protective Order (hereinafter “Confidential Information”) includes Disclosures or Discovery
20 Material that contains PII, PHI, or Proprietary Information, and shall be treated in accordance with
21 Paragraph 7.2 and other paragraphs of this Stipulated Protective Order.

22 2.18 Information designated as “ATTORNEYS’ EYES ONLY” pursuant to this
23 Stipulated Protective Order (hereinafter “Attorneys’ Eyes Only Information”) includes Disclosures
24 or Discovery Material that (a) constitutes Proprietary Information and (b) the Designating Party
25 believes in good faith to be extremely confidential and/or extremely sensitive in nature, and shall
26 be treated in accordance with Paragraph 7.3 and other paragraphs of this Stipulated Protective
27 Order.

28 2.19 Information designated as “HIGHLY CONFIDENTIAL” pursuant to this Stipulated

1 Protective Order (hereinafter “Highly Confidential Information”) includes Disclosures or
2 Discovery Material that (a) constitutes Proprietary Information, (b) the Designating Party believes
3 in good faith to be extremely confidential and/or extremely sensitive in nature, and (c) relates to
4 the Medicare Advantage bid process or other competitively sensitive information, and shall be
5 treated in accordance with Paragraph 7.4 and other paragraphs of this Stipulated Protective Order.

6 3. SCOPE

7 The Court finds that this Stipulated Protective Order is a “qualified protective order” within
8 the meaning of 45 C.F.R. § 164.512(e)(1)(v). The protections conferred by this Stipulated
9 Protective Order cover not only Protected Material (as defined in Paragraph 2.15), but also (1) any
10 information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or presentations by
12 Parties, Non-Parties, or their Counsel that might reveal Protected Material. However, the
13 protections conferred by this Stipulated Protective Order do not cover the following information:

14 (a) any information that is in the public domain at the time of disclosure to a Receiving Party or
15 becomes part of the public domain after its disclosure to a Receiving Party as a result of publication
16 not involving a violation of this Stipulated Protective Order, including becoming part of the public
17 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
18 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
19 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
20 use of Protected Material at trial shall be governed by a separate agreement or order that the Parties
21 will propose for the Court’s consideration.

22 4. DURATION

23 Even after final disposition of the litigation of this action, the confidentiality obligations
24 imposed by this Stipulated Protective Order shall continue to be binding upon all persons or entities
25 who are subject to the terms hereof (including former employees of any Party or Non-Party who
26 received Confidential Information, Attorneys’ Eyes Only Information, or Highly Confidential
27 Information) until a Designating Party agrees otherwise in writing or a Court order otherwise
28 directs. For purposes of this Stipulated Protective Order, final disposition shall be deemed to be the

1 later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2)
2 final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials,
3 or reviews of this action, including the time limits for filing any motions or applications for
4 extension of time pursuant to applicable law. The Court shall retain continuing jurisdiction in order
5 to enforce the terms of this Stipulated Protective Order.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
8 or Non-Party that designates information or items for protection under this Stipulated Protective
9 Order must take care to limit any such designation to specific material that qualifies under the
10 appropriate standards.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Stipulated
12 Protective Order, such as the inadvertent disclosure exceptions provided in Paragraph 5.4, or as
13 otherwise stipulated or ordered, Disclosures or Discovery Material that qualifies for protection
14 under this Stipulated Protective Order must be clearly so designated before the material is disclosed
15 or produced. Designation in conformity with this Stipulated Protective Order requires:

16 (a) Documents.

17 (1) for information in documentary form that allows endorsements or similar
18 designation on the image (e.g., paper or electronic documents, but excluding transcripts of
19 depositions or other pretrial or trial proceedings), the Producing Party shall mark each page of a
20 document asserted to contain Confidential Information, Attorneys' Eyes Only Information, or
21 Highly Confidential Information. The Producing Party shall affix the legend "CONFIDENTIAL"
22 for those documents that contain Confidential Information as defined in Paragraph 2.17. The
23 Producing Party shall affix the legend "ATTORNEYS' EYES ONLY" for those documents that
24 contain Attorneys' Eyes Only Information as defined in Paragraph 2.18. The Producing Party shall
25 affix the legend "HIGHLY CONFIDENTIAL" for those documents that contain Highly
26 Confidential Information as defined in Paragraph 2.19.

27 (2) for electronic information that is provided in native form or a format that is not
28 amenable to visible endorsement on the image, the designation of Confidential Information shall

1 be made by affixing the legend “CONFIDENTIAL” on the slip-sheet for the document, the
2 designation of Attorneys’ Eyes Only Information shall be made by affixing the legend
3 “ATTORNEYS’ EYES ONLY” on the slip-sheet for the document, and the designation of Highly
4 Confidential Information shall be made by affixing the legend “HIGHLY CONFIDENTIAL” on
5 the slip-sheet for the document. The metadata for the document shall also reflect its confidential
6 status. The media on which the Confidential Information, Attorneys’ Eyes Only Information, or
7 Highly Confidential Information is provided (e.g., CD, DVD, external hard drive) also shall be and
8 remain plainly labeled with “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” and/or
9 “HIGHLY CONFIDENTIAL,” as appropriate (unless and until the protection of the data within
10 the media is removed). Any copying or transferring of electronic files that are designated as
11 Confidential Information, Attorneys’ Eyes Only Information, or Highly Confidential Information
12 must be done in a manner that maintains the protection for all copies.

13 (b) Interrogatory Answers and Responses to Requests for Production or Admission. The
14 Producing Party shall designate Confidential Information contained in interrogatory answers or
15 responses to requests for production or admission by placing before the answer or response: “The
16 following response is ‘CONFIDENTIAL.’” The Producing Party shall designate Attorneys’ Eyes
17 Only Information contained in interrogatory answers or responses to requests for production or
18 admission by placing before the answer or response: “The following response is ‘ATTORNEYS’
19 EYES ONLY.’” The Producing Party shall designate Highly Confidential Information contained
20 in interrogatory answers or responses to requests for production or admission by placing before the
21 answer or response: “The following response is ‘HIGHLY CONFIDENTIAL.’” Only that part of
22 the answer or response that contains Confidential Information, Attorneys’ Eyes Only Information,
23 or Highly Confidential Information shall be so designated and the Producing Party shall highlight
24 the Confidential Information, Attorneys’ Eyes Only Information, or Highly Confidential
25 Information to show what specific information constitutes Confidential Information, Attorneys’
26 Eyes Only Information, or Highly Confidential Information.

27 (c) Deposition Testimony. Subject to the requirements of Paragraphs 7.2-7.4 below,
28 during a deposition, the parties may show deponents Disclosures or Discovery Material that has

1 been designated as Confidential Information, Attorneys' Eyes Only Information, or Highly
2 Confidential Information. Portions of testimony at a deposition may be designated by any Party or
3 Non-Party as Confidential Information, Attorneys' Eyes Only Information, or Highly Confidential
4 Information by indicating on the record at the deposition that the testimony is confidential and
5 subject to the provisions of this Stipulated Protective Order and the reasons for the assertion.
6 Additionally and alternatively, any Party or Non-Party may also designate information disclosed at
7 a deposition as Confidential Information, Attorneys' Eyes Only Information, or Highly
8 Confidential Information by notifying all counsel in writing within thirty (30) calendar days of
9 receipt of the official deposition transcript or copy thereof (or written notification that the transcript
10 is available), listing the specific pages and lines of the transcript and/or any exhibits that should be
11 treated as Confidential Information, Attorneys' Eyes Only Information, or Highly Confidential
12 Information. After a Party or Non-Party designates a portion of a deposition transcript as
13 Confidential Information, the front of the original and each copy of the deposition transcript shall
14 be marked: "This deposition transcript includes CONFIDENTIAL INFORMATION SUBJECT TO
15 PROTECTIVE ORDER." After a Party or Non-Party designates a portion of a deposition transcript
16 as Attorneys' Eyes Only Information, the front of the original and each copy of the deposition
17 transcript shall be marked: "This deposition transcript includes ATTORNEYS' EYES ONLY
18 INFORMATION SUBJECT TO PROTECTIVE ORDER." After a Party or Non-Party designates
19 a portion of a deposition transcript as Highly Confidential Information, the front of the original and
20 each copy of the deposition transcript shall be marked: "This deposition transcript includes
21 HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER." If such
22 deposition was videotaped, both the recording storage medium (i.e., CD or DVD) and its container
23 shall also be labeled: "This deposition transcript includes CONFIDENTIAL INFORMATION
24 SUBJECT TO PROTECTIVE ORDER," "This deposition transcript includes ATTORNEYS'
25 EYES ONLY INFORMATION SUBJECT TO PROTECTIVE ORDER," and/or "This deposition
26 transcript includes HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE
27 ORDER," as appropriate. Only those portions of the deposition transcript that are designated as
28 containing Confidential Information, Attorneys' Eyes Only Information, or Highly Confidential

1 Information shall be governed by this Stipulated Protective Order.

2 (d) Pre-Production Inspection. A Party or Non-Party that makes original documents or
3 materials available for inspection need not designate them for protection until after the inspecting
4 Party has indicated which material it would like copied and produced. During the inspection and
5 before the designation, all of the material made available for inspection shall be deemed “HIGHLY
6 CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and
7 produced, the Producing Party must determine which documents, or portions thereof, qualify for
8 protection under this Order. Then, before producing the specified documents, the Producing Party
9 must affix the “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “HIGHLY
10 CONFIDENTIAL” legend to each page of a document containing Protected Material.

11 5.3 Documents or Information Obtained From Non-Parties. Documents or information
12 produced by a Non-Party or testimony provided by a Non-Party may be designated by the Non-
13 Party as Confidential Information, Attorneys’ Eyes Only Information, or Highly Confidential
14 Information in accordance with all of the terms and conditions of this Stipulated Protective Order.

15 5.4 Failures to Designate. A failure to designate qualified information or items does not,
16 standing alone, waive the Designating Party’s right to secure protection under this Stipulated
17 Protective Order for such material. Upon correction of a designation, the Receiving Party must
18 make reasonable efforts to assure that the material is treated in accordance with the provisions of
19 this Stipulated Protective Order. In the event that Disclosures or Discovery Material are or have
20 been produced without being marked “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or
21 “HIGHLY CONFIDENTIAL,” the Designating Party may notify the Receiving Party of the
22 appropriate confidentiality designation and produce a metadata overlay, new hard copy, images, or
23 slip-sheets, as applicable, reflecting the appropriate confidentiality designation. Upon receipt of
24 any such reproductions, the Receiving Party shall thereafter preserve such reproduced Disclosures
25 or Discovery Material in accordance with this Stipulated Protective Order, including preserving the
26 material in compliance with Paragraphs 7.2-7.4 of this Stipulated Protective Order. If prior to
27 receiving such notice from the Designating Party, the Receiving Party has disclosed Confidential
28 Information, Attorneys’ Eyes Only Information, or Highly Confidential Information to a Non-Party

1 not identified in Paragraphs 7.2-7.4, the Receiving Party shall promptly take reasonable steps to
2 retrieve all copies of the Confidential Information, Attorneys' Eyes Only Information, or Highly
3 Confidential Information from the Non-Party and notify the Non-Party that the material remains
4 subject to this Stipulated Protective Order. The Receiving Party shall notify the Designating Party
5 of this disclosure and the efforts to recover the Confidential Information, Attorneys' Eyes Only
6 Information, or Highly Confidential Information.

7 5.5. Proprietary Information. For Documents containing Proprietary Information
8 designated as Confidential, Attorneys' Eyes Only, or Highly Confidential, the production of
9 documents in this case by a Party or Non-Party shall not be construed as waiving or diminishing
10 the interests of the Party or Non-Party in and rights to the confidentiality of Proprietary Information.

11 5.6. PII, PHI, and Proprietary Information. Parties, Outside Counsel, and Non-Parties
12 that receive information exchanged in this action have a responsibility to protect information
13 containing PII, PHI, and Proprietary Information in accordance with this Stipulated Protective
14 Order and applicable law even if the information is not designated as Confidential Information.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party may challenge a designation of Disclosures or
17 Discovery Material as Confidential Information, Attorneys' Eyes Only Information, or Highly
18 Confidential Information at any time. A Party does not waive its right to challenge a confidentiality
19 designation by electing not to mount a challenge promptly after the original designation is
20 disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
22 by providing written notice of each designation that it is challenging and describing the basis for
23 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
24 must recite that the challenge to confidentiality is being made in accordance with this specific
25 paragraph of the Stipulated Protective Order. The Challenging and Designating Parties shall
26 attempt to resolve each challenge in good faith through a prompt meet and confer. In conferring,
27 the Challenging Party must explain the basis for its belief that the confidentiality designation was
28 not proper and must give the Designating Party an opportunity to review the designated material,

1 to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
2 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process
3 only if it has engaged in this meet and confer process first or establishes that the Designating Party
4 is unwilling to participate in the meet and confer process in a timely manner.

5 6.3 Judicial Intervention. The Challenging Party may file a motion challenging a
6 confidentiality designation at any time if there is good cause for doing so, including a challenge to
7 the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to
8 this provision must be accompanied by a competent declaration affirming that the movant has
9 complied with the meet and confer requirements imposed by the preceding paragraph. The burden
10 of persuasion in any such challenge proceeding shall be on the Designating Party. The Parties shall
11 refrain from making frivolous challenges and those made for an improper purpose (e.g., to harass
12 or impose unnecessary expenses and burdens on other parties). Unless the Designating Party has
13 waived the confidentiality designation, all Parties and Non-Parties shall continue to afford the
14 material in question the level of protection to which it is entitled under the Producing Party's
15 designation until the Court rules on the challenge. If it is determined that the material in question
16 should no longer be designated as Confidential Information, Attorneys' Eyes Only Information, or
17 Highly Confidential Information, or if the Designating Party at any time withdraws the designation,
18 the Designating Party shall promptly provide all other Parties with a metadata overlay, replacement
19 documents, files, or information free from any markings or designations as Confidential
20 Information, Attorneys' Eyes Only Information, or Highly Confidential Information, as
21 appropriate. The replacement versions shall be provided in the same format as the information that
22 is to be replaced, unless otherwise agreed to by the Parties or Non-Parties. The presumptive time
23 for providing the replacement information shall be fifteen (15) calendar days from the Court's
24 ruling or the Designating Party's withdrawal of the designation.

25 7. ACCESS TO AND USE OF PROTECTED MATERIAL

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
27 produced by another Party or by a Non-Party in connection with this action only for prosecuting,
28 defending, or attempting to settle this action. Such Protected Material may be disclosed only to the

1 categories of persons and under the conditions described in this Stipulated Protective Order. When
2 the action has been terminated, a Receiving Party must comply with the provisions of Section 14
3 below. Protected Material must be stored and maintained by a Receiving Party at a location and in
4 a secure manner that ensures that access is limited to the persons authorized under this Stipulated
5 Protective Order.

6 7.2 Disclosure of Confidential Information or Items. Unless otherwise ordered by the
7 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
8 information or item designated “CONFIDENTIAL” only to:

9 (a) the Receiving Party’s Outside Counsel in this action, as well as associated personnel
10 assisting counsel in this action to whom it is reasonably necessary to disclose the information for
11 the litigation of this action, such as paralegals, contract attorneys, litigation support, information
12 technology, information or records management, investigative, secretarial, or clerical personnel, as
13 well as associated personnel assisting counsel in this action to whom it is reasonably necessary to
14 disclose the information for the litigation of this action, provided that each is advised of the terms
15 of this Stipulated Protective Order and his or her obligation under the Stipulated Protective Order
16 to keep the Protected Material confidential;

17 (b) the officers, directors, and employees (including House Counsel) of the Receiving
18 Party to whom disclosure is reasonably necessary for the litigation of this action, provided that each
19 is first advised of the terms of this Stipulated Protective Order and his or her obligation under the
20 Stipulated Protective Order to keep the Protected Material confidential;

21 (c) Experts of the Receiving Party to whom disclosure is reasonably necessary for the
22 litigation of this action and who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A);

24 (d) the Court and its personnel;

25 (e) court reporters, their staff, and Professional Vendors to whom disclosure is
26 reasonably necessary for the litigation of this action and who have signed the “Acknowledgment
27 and Agreement to Be Bound” (Exhibit A);

28 (f) any Non-Party witness (i.e., a witness who is not an agent or representative of or

1 employed by a Party to this action) who is preparing to testify or who testifies at a deposition or
2 hearing in this action concerning documents or information designated as subject to this Stipulated
3 Protective Order, and legal counsel retained by such Non-Party witness, provided that such Non-
4 Party witness is first advised of the terms of this Stipulated Protective Order and his or her
5 obligation under this Stipulated Protective Order to keep the Protected Material confidential and
6 who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (g) any Non-Party individual interviewed by a Party’s legal counsel in connection with
8 this action, provided that any such Non-Party is first advised of the terms of this Stipulated
9 Protective Order and his or her obligation under this Stipulated Protective Order to keep the
10 Protected Material confidential and who has signed the “Acknowledgment and Agreement to Be
11 Bound” (Exhibit A);

12 (h) the author or recipient of a document, with respect to that document;

13 (i) a current employee of a Designating Party or of an affiliate of a Designating Party,
14 with respect to information or items produced by that Designating Party, during testimony of such
15 person at a deposition or hearing; and

16 (j) any private mediators and their employees used in this action, provided that each is
17 first advised of the terms of this Stipulated Protective Order and his or her obligation under the
18 Stipulated Protective Order to keep the Protected Material confidential.

19 The procedures for maintaining the confidentiality of Confidential Information during
20 any hearing or trial in this action shall be determined by the Parties and the Court in advance of the
21 hearing or trial.

22 7.3 Disclosure of Attorneys’ Eyes Only Information or Items. Unless otherwise ordered
23 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
24 information or item designated “ATTORNEYS’ EYES ONLY” only to:

25 (a) those persons described in sub-paragraphs (a), (c), (d), (e), (i), and (j) of Paragraph
26 7.2 of this Stipulated Protective Order;

27 (b) House Counsel from the Receiving Party not otherwise covered in paragraph 7.3(a)
28 of this Stipulated Protective Order who have responsibilities in connection with litigating this

1 action, provided that such persons (i) are first advised of the terms of this Stipulated Protective
2 Order and their obligation under this Stipulated Protective Order to keep the Protected Material
3 confidential, (ii) have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
4 (iii) shall view “ATTORNEYS’ EYES ONLY” documents only remotely on a server hosted by the
5 Receiving Party’s Outside Counsel and its vendors and may not copy, download, or otherwise
6 receive or possess such documents; and

7 (c) those persons described in sub-paragraph (h) of Paragraph 7.2 of this Stipulated
8 Protective Order not otherwise covered in Paragraph 7.3(a) of this Stipulated Protective Order,
9 provided that such persons (i) do not retain copies of the materials designated “ATTORNEYS’
10 EYES ONLY,” (ii) are first advised of the terms of this Stipulated Protective Order and his or her
11 obligation under this Stipulated Protective Order to keep the “ATTORNEYS’ EYES ONLY”
12 documents confidential, and (iii) have signed the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A).

14 The procedures for maintaining the confidentiality of Attorneys’ Eyes Only Information
15 during any hearing or trial in this action shall be determined by the Parties and the Court in advance
16 of the hearing or trial.

17 7.4 Disclosure of Highly 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 “HIGHLY CONFIDENTIAL” only to:

20 (a) those persons described in sub-paragraphs (a), (c), (d), (e), (i), and (j) of Paragraph
21 7.2 of this Stipulated Protective Order;

22 (b) House Counsel; and

23 (c) those persons described in sub-paragraph (h) of Paragraph 7.2 of this Stipulated
24 Protective Order not otherwise covered in Paragraph 7.4(a) of this Stipulated Protective Order,
25 provided that such persons (i) do not retain copies of the materials designated “HIGHLY
26 CONFIDENTIAL,” (ii) are first advised of the terms of this Stipulated Protective Order and his or
27 her obligation under this Stipulated Protective Order to keep the “HIGHLY CONFIDENTIAL”
28 documents confidential, and (iii) have signed the “Acknowledgment and Agreement to Be Bound”

1 (Exhibit A).

2 The procedures for maintaining the confidentiality of Highly Confidential Information
3 during any hearing or trial in this action shall be determined by the Parties and the Court in advance
4 of the hearing or trial.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
6 LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that compels
8 disclosure of any information or items designated in this action as “CONFIDENTIAL,”
9 “ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL,” that Party must:

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

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

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

18 If the Designating Party timely seeks a protective order, the Party served with the subpoena
19 or court order shall not produce any information designated in this action as “CONFIDENTIAL,”
20 “ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL,” before a determination by the
21 court from which the subpoena or order issued, unless the Party has obtained the Designating
22 Party’s permission. The Designating Party shall bear the burden and expense of seeking protection
23 in that court of its Protected Material – and nothing in these provisions should be construed as
24 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
25 another court.

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

28 (a) The terms of this Order are applicable to information produced by a Non-Party in this

1 action and designated as “CONFIDENTIAL,” “ATTORNEYS’ EYES ONLY,” or “HIGHLY
2 CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation
3 is protected by the remedies and relief provided by this Stipulated Protective Order. Nothing in
4 these provisions should be construed as prohibiting a Non-Party from seeking additional
5 protections.

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

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

12 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
13 this litigation, the relevant discovery request(s), and a reasonably specific description of the
14 information requested; and

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

16 (c) If the Non-Party fails to object or seek a protective order from this Court within
17 fourteen (14) calendar days of receiving the notice and accompanying information, the Receiving
18 Party may produce the Non-Party’s confidential information responsive to the discovery request.
19 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
20 information in its possession or control that is subject to the confidentiality agreement with the
21 Non-Party before a determination by the Court. Absent a Court order to the contrary, the Non-Party
22 shall bear the burden and expense of seeking protection in this Court of its Protected Material.

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
25 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
26 the Receiving Party must immediately (a) notify in writing the Designating Party of the
27 unauthorized disclosures, providing with such notice the identity of the person to whom the
28 Protected Material was disclosed and, upon request of the Designating Party, details concerning the

1 circumstances of the disclosure, (b) use its best efforts to retrieve all unauthorized copies of the
2 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made
3 of all the terms of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” (Exhibit A).

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
6 MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This Section
10 is not intended to modify the agreement between the Parties pursuant to Federal Rule of Evidence
11 502(d) that is established in the Parties’ “Joint Stipulation and Order re: Non-Waiver of Privilege
12 and Protected Material.”

13 12. GOOD CAUSE STATEMENT

14 12.1 Particularized Need. The parties jointly contend that there is a particularized need
15 as to documents containing confidential information, Personally Identifiable Information, Protected
16 Health Information, and proprietary information, because of the privacy and pecuniary interests at
17 stake. This includes the personal information of third party patients, proprietary information related
18 to the Medicare Advantage bid process, and other competitively sensitive information. Because of
19 these sensitive interests, this proposed order is being presented for the court’s approval instead of
20 resorting to a private agreement between the parties.

21 13. MISCELLANEOUS

22 13.1 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the
23 right of any person to seek its modification by the Court in the future.

24 13.2 Right to Assert Other Objections. By stipulating to the entry of this Stipulated
25 Protective Order, no Party waives any right it otherwise would have to object to disclosing or
26 producing any information or item on any ground not addressed in this Stipulated Protective Order.
27 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
28 material covered by this Stipulated Protective Order.

1 13.3 Filing Protected Material. Without written permission from the Designating Party
2 or a Court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material. In the absence of such permission or order,
4 a Party may nonetheless utilize Protected Material in Court filings, but it must seek to file the
5 portions containing such Protected Material under seal in compliance with Civil Local Rule 141.

6 13.4 Use of Party's Own Confidential Information. Nothing in this Stipulated Protective
7 Order shall restrict the right of any Party to use its own Confidential Information, Attorneys' Eyes
8 Only Information, or Highly Confidential Information for any purpose whatsoever, but if any such
9 use results in a disclosure that causes the Confidential Information, Attorneys' Eyes Only
10 Information, or Highly Confidential Information to lose its designation as Confidential Information,
11 Attorneys' Eyes Only Information, or Highly Confidential Information, then it shall no longer be
12 subject to any protection under this Protective Order. Nothing in this Stipulated Protective Order,
13 however, affects the protections afforded to such Personally Identifiable Information and/or
14 Protected Health Information under applicable federal, state, or local laws.

15 14. FINAL DISPOSITION

16 Within sixty (60) calendar days after the final disposition of this action, as defined in Section
17 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such
18 material. As used in this Section, "all Protected Material" includes all copies, abstracts,
19 compilations, summaries, and any other format reproducing or capturing any of the Protected
20 Material. Regardless of whether the Protected Material is returned or destroyed, the Receiving Party
21 must submit a written certification to the Producing Party (and, if not the same person or entity, to
22 the Designating Party) by the sixty (60) calendar day deadline that (1) identifies (by category, where
23 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
24 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
25 reproducing or capturing any of the Protected Material. In the course of disposing of information
26 in its possession under this provision, the Receiving Party will also take reasonable steps to notify
27 persons to whom it distributed Protected Material pursuant to this Stipulated Protective Order that
28 such information should be returned to the Receiving Party or destroyed by the person possessing

1 the information with written confirmation to the Receiving Party. Notwithstanding this Section,
2 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
3 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
4 attorney work product, and consultant and expert work product, even if such materials contain
5 Protected Material.

6
7 **IT IS SO STIPULATED.**

8
9 Dated: January 11, 2023

Respectfully submitted,

10 By: /s/ Dimitri D. Portnoi
11 DIMITRI D. PORTNOI
12 KYLE M. GROSSMAN

13 *Attorneys for Defendants Kaiser*
14 *Foundation Health Plan, Inc.; Kaiser*
15 *Foundation Hospitals; The Permanente*
16 *Medical Group, Inc.; Southern*
17 *California Permanente Medical Group;*
18 *and Colorado Permanente Medical*
19 *Group, P.C.*

20
21 Dated: January 11, 2023

Respectfully submitted

22 By: /s/ Adam Pollock (as authorized 1/11/23)
23 ADAM POLLOCK

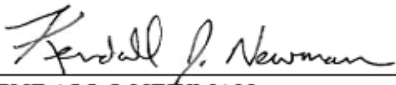
24 *Attorney for Plaintiff-Relator, Jeffrey*
25 *Mazik*

ORDER

The court has reviewed the parties' stipulated protective order. (See ECF No. 96.) The stipulation comports with the relevant authorities and the court's applicable local rule. See L.R. 141.1. The court APPROVES the protective order, subject to the following clarification. The Local Rules state that once an action is closed, "unless otherwise ordered, the court will not retain jurisdiction over enforcement of the terms of any protective order filed in that action." L.R. 141.1(f); see also, e.g., MD Helicopters, Inc. v. Aerometals, Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district generally do not agree to retain jurisdiction for disputes concerning protective orders after closure of the case). Thus, the court will not retain jurisdiction over this protective order once the case is closed.

Dated: January 17, 2023

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE 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 Eastern District of California on [date] in the case of
United States ex rel. Mazik v. Kaiser Foundation Health Plan, Inc., et al., Case No. 2:19-cv-
00559-DAD-KJN. 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
Eastern 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: _____