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20 Attorneys for Defendants Kaiser Foundation  
21 Hospitals, Kaiser Foundation Health Plan, Inc.,  
22 The Permanente Medical Group, Inc.

23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA

25 ROBIN LOVE,

26 Plaintiff,

27 vs.

28 KAISER FOUNDATION HOSPITALS,  
KAISER FOUNDATION HEALTH PLAN,  
THE PERMANENTE MEDICAL GROUP,  
AND DOES 1-10, inclusive,

Defendants.

) Case No.: 12-cv-05679 (WHO)(DMR)

) **AMENDED STIPULATED**  
) **PROTECTIVE ORDER**

1  
2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of  
4 confidential, proprietary, or private information for which special protection from public  
5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
6 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
7 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
8 protections on all disclosures or responses to discovery and that the protection it affords from  
9 public disclosure and use extends only to the limited information or items that are entitled to  
10 confidential treatment under the applicable legal principles. The parties further acknowledge that  
11 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
12 Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and  
13 the standards that will be applied when a party seeks permission from the court to file material  
14 under seal.  
15

16 2. DEFINITIONS

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
20 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
21 of Civil Procedure 26(c).  
22

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
24 well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or items that  
26 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

1           2.5     Disclosure or Discovery Material: all items or information, regardless of the  
2 medium or manner in which it is generated, stored, or maintained (including, among other things,  
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
4 responses to discovery in this matter.

5           2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to  
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or  
7 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's  
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party  
9 or of a Party's competitor.

10          2.7     "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or  
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another  
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
13 less restrictive means.

14          2.8     House Counsel: attorneys who are employees of a party to this action. House  
15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16          2.9     Non-Party: any natural person, partnership, corporation, association, or other legal  
17 entity not named as a Party to this action.

18          2.10    Outside Counsel of Record: attorneys who are not employees of a party to this  
19 action but are retained to represent or advise a party to this action and have appeared in this  
20 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
21 that party.

22          2.11    Party: any party to this action, including all of its officers, directors, employees,  
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24          2.12    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
25 Material in this action.

26          2.13    Professional Vendors: persons or entities that provide litigation support services  
27  
28

1 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
2 organizing, storing, or retrieving data in any form or medium) and their employees and  
3 subcontractors.

4 2.14 Protected Material: any Disclosure or Discovery Material that is designated as  
5 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

6 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
7 Producing Party.

8  
9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected Material  
11 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
12 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
13 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
14 However, the protections conferred by this Stipulation and Order do not cover the following  
15 information: (a) any information that is in the public domain at the time of disclosure to a  
16 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
17 a result of publication not involving a violation of this Order, including  
18 becoming part of the public record through trial or otherwise; and (b) any information known to  
19 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure  
20 from a source who obtained the information lawfully and under no obligation of confidentiality  
21 to the Designating Party. Any use of Protected Material at trial shall be governed by a separate  
22 agreement or order.

23  
24 **4. DURATION**

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

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
7 or Non-Party that designates information or items for protection under this Order must take care  
8 to limit any such designation to specific material that qualifies under the appropriate standards.  
9 To the extent it is practical to do so, the Designating Party must designate for protection only  
10 those parts of material, documents, items, or oral or written communications that qualify – so  
11 that other portions of the material, documents, items, or communications for which protection is  
12 not warranted are not swept unjustifiably within the ambit of this Order.

13  
14 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
15 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
16 unnecessarily encumber or retard the case development process or to impose unnecessary  
17 expenses and burdens on other parties) expose the Designating Party to sanctions.

18 If it comes to a Designating Party’s attention that information or items that it designated  
19 for protection do not qualify for protection at all or do not qualify for the level of protection  
20 initially asserted, that Designating Party must promptly notify all other parties that it is  
21 withdrawing the mistaken designation.

22 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
23 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
24 Disclosure or Discovery

25 Material that qualifies for protection under this Order must be clearly so designated  
26 before the material is disclosed or produced.

27 Designation in conformity with this Order requires:  
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1 (a) for information in documentary form (e.g., paper or electronic documents, but  
2 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
3 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
4 EYES ONLY” to each page that contains protected material. If only a portion or portions of the  
5 material on a page qualifies for protection, the Producing Party also must clearly identify the  
6 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
7 each portion, the level of protection being asserted.

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

21  
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 and specify the level of protection being asserted. When it is  
25 impractical to identify separately each portion of testimony that is entitled to protection and it  
26 appears that substantial portions of the testimony may qualify for protection, the Designating  
27 Party may invoke on the record (before the deposition, hearing, or other proceeding is  
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1 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to  
2 which protection is sought and to specify the level of protection being asserted. Only those  
3 portions of the testimony that are appropriately designated for protection within the 21 days shall  
4 be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating  
5 Party may specify, at the deposition or up to 21 days afterwards if that period is properly  
6 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY  
7 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

8 Parties shall give the other parties notice if they reasonably expect a deposition, hearing  
9 or other proceeding to include Protected Material so that the other parties can ensure that only  
10 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
11 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
12 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 Transcripts containing Protected Material shall have an obvious legend on the title page  
15 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
16 pages (including line numbers as appropriate) that have been designated as Protected Material  
17 and the level of protection being asserted by the Designating Party. The Designating Party shall  
18 inform the court reporter of these requirements. Any transcript that is prepared before the  
19 expiration of a 21-day period for designation shall be treated during that period as if it had been  
20 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
21 otherwise agreed. After the expiration of that period, the transcript shall be treated only as  
22 actually designated.

23  
24 (c) for information produced in some form other than documentary and for any other  
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
26 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
27 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions  
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1 of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
2 identify the protected portion(s) and specify the level of protection being asserted.

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

## 8 9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

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

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
3 or produced by another Party or by a Non-Party in connection with this case only for  
4 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
5 disclosed only to the categories of persons and under the conditions described in this Order.  
6 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
7 section 13 below (FINAL DISPOSITION).

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

10 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
11 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
12 disclose any information or item designated “CONFIDENTIAL” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
14 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
15 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that  
16 is attached hereto as Exhibit A;

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

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

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial consultants, and Professional  
25 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);  
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1 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
2 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
3 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
4 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
5 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
6 under this Stipulated Protective Order.

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

9 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
10 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
11 Designating Party, a Receiving Party may disclose any information or item designated  
12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
14 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information  
15 for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that  
16 is attached hereto as Exhibit A;

17 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this  
18 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
19 and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed];

20 (c) the court and its personnel;

21 (d) court reporters and their staff, professional jury or trial consultants, and Professional  
22 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
23 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

24 (e) the author or recipient of a document containing the information or a custodian or  
25 other person who otherwise possessed or knew the information.  
26  
27  
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1           7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL  
2 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

3           (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating  
4 Party, a Party that seeks to disclose to Designated House Counsel any information or item that  
5 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to  
6 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the  
7 full name of the Designated House Counsel and the city and state of his or her residence, and (2)  
8 describes the Designated House Counsel’s current and reasonably foreseeable future primary job  
9 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may  
10 become involved, in any competitive decision-making.

11           (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating  
12 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or  
13 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
14 pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that (1)  
15 identifies the general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
16 ONLY” information that the Receiving Party seeks permission to disclose to the Expert, (2) sets  
17 forth the full name of the Expert and the city and state of his or her primary residence, (3)  
18 attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s),  
19 (5) identifies each person or entity from whom the Expert has received compensation or funding  
20 for work in his or her areas of expertise or to whom the expert has provided professional  
21 services, including in connection with a litigation, at any time during the preceding five years,  
22 and (6) identifies (by name and number of the case, filing date, and location of court) any  
23 litigation in connection with which the Expert has offered expert testimony, including through a  
24 declaration, report, or testimony at a deposition or trial, during the preceding five years.

25           (b) A Party that makes a request and provides the information specified in the preceding  
26 respective paragraphs may disclose the subject Protected Material to the identified Designated  
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1 House Counsel or Expert unless, within 30 days of delivering the request, the Party receives a  
2 written objection from the Designating Party. Any such objection must set forth in detail the  
3 grounds on which it is based.

4 (c) A Party that receives a timely written objection must meet and confer with the  
5 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by  
6 agreement within seven days of the written objection. If no agreement is reached, the Party  
7 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as  
8 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order  
9 62, if applicable) seeking permission from the court to do so. Any such motion must describe the  
10 circumstances with specificity, set forth in detail the reasons why the disclosure to Designated  
11 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure  
12 would entail, and suggest any additional means that could be used to reduce that risk. In addition,  
13 any such motion must be accompanied by a competent declaration describing the parties' efforts  
14 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer  
15 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to  
16 approve the disclosure.  
17

18 In any such proceeding, the Party opposing disclosure to Designated House Counsel or  
19 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail  
20 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected  
21 Material to its Designated House Counsel or Expert.  
22

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
24 **OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels  
26 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY":  
28

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

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

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

8 If the Designating Party timely seeks a protective order, the Party served with the  
9 subpoena or court order shall not produce any information designated in this action as  
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a  
11 determination by the court from which the subpoena or order issued, unless the Party has  
12 obtained the Designating Party’s permission. The Designating Party shall bear the burden and  
13 expense of seeking protection in that court of its confidential material – and nothing in these  
14 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
15 disobey a lawful directive from another court.  
16

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

19 (a) The terms of this Order are applicable to information produced by a Non-Party in  
20 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with  
22 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
23 provisions should be construed as prohibiting a Non-Party from seeking additional protections.  
24

25 (b) In the event that a Party is required, by a valid discovery request, to produce a  
26 Non-Party’s confidential information in its possession, and the Party is subject to an agreement  
27 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:  
28

1                   1. promptly notify in writing the Requesting Party and the Non-Party that  
2 some or all of the information requested is subject to a confidentiality agreement with a Non-  
3 Party;

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

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

8                   (c) If the Non-Party fails to object or seek a protective order from this court within 14  
9 days of receiving the notice and accompanying information, the Receiving Party may produce  
10 the Non-Party's confidential information responsive to the discovery request. If the Non-Party  
11 timely seeks a protective order, the Receiving Party shall not produce any information in its  
12 possession or control that is subject to the confidentiality agreement with the Non-Party before a  
13 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the  
14 burden and expense of seeking protection in this court of its Protected Material.  
15

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

17                   If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
18 Protected Material to any person or in any circumstance not authorized under this Stipulated  
19 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating  
20 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of  
21 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
22 made of all the terms of this Order, and (d) request such person or persons to execute the  
23 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.  
24

25 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
26 **PROTECTED MATERIAL**

27                   When a Producing Party gives notice to Receiving Parties that certain inadvertently  
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1 produced material is subject to a claim of privilege or other protection, the obligations of the  
2 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
3 provision is not intended to modify whatever procedure may be established in an e-discovery  
4 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
5 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
6 communication or information covered by the attorney-client privilege or work product  
7 protection, the parties may incorporate their agreement in the stipulated protective order  
8 submitted to the court.  
9

10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
12 seek its modification by the court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
14 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
16 no Party waives any right to object on any ground to use in evidence of any of the material  
17 covered by this Protective Order.  
18

19 12.3 Filing Protected Material. Without written permission from the Designating Party  
20 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
21 the public record in this action any Protected Material. A Party that seeks to file under seal any  
22 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected  
23 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
24 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a  
25 sealing order will issue only upon a request establishing that the Protected Material at issue is  
26 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a  
27 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-  
28

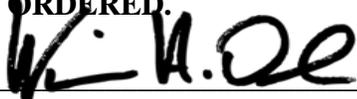


1 Dated: October 11, 2013  
2 Oakland, California

**MARION'S INN, LLP**  
Attorneys for Defendants  
By: \_\_\_\_\_  
/s/ Mark Palley  
Mark Palley  
1611 Telegraph Avenue, Suite 707  
Oakland, CA 94612

6  
7 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

8 Dated: October 15, 2013

  
\_\_\_\_\_  
THE HONORABLE WILLIAM H. ORRICK

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for  
6 the Northern District of California on [date] in the case of *LOVE V. KAISER FOUNDATION*  
7 *HOSPITALS, ET AL.*, CASE NO. 12-CV-05679 (WHO)(DMR). I agree to comply with and to be  
8 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
9 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
10 solemnly promise that I will not disclose in any manner any information or item that is subject to  
11 this Stipulated Protective Order to any person or entity except in strict compliance with the  
12 provisions of this Order.

13  
14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

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

21  
22 Date: \_\_\_\_\_

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

24 Printed name: \_\_\_\_\_  
25 [printed name]

26 Signature: \_\_\_\_\_  
27 [signature]