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d/b/a BLUE SHIELD OF CALIFORNIA

[other counsel listed on signature pages]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

RHEUMATOLOGY DIAGNOSTICS
LABORATORY, INC., et al.,

Plaintiffs,

vs.

CALIFORNIA PHYSICIANS' SERVICE
d/b/a BLUE SHIELD OF CALIFORNIA, et al.,

Defendants.

Case No. 3:12-cv-05847-WHO
STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of confi-
3 dential, 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. According-
5 ly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protec-
6 tive Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and
8 use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
10 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential infor-
11 mation under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must
12 be followed and the standards that will be applied when a party seeks permission from the court
13 to file material under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of infor-
16 mation or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information considered by the Pro-
18 ducing Party in good faith to contain non-public competitive business information, forecasts,
19 projections, contracts with third parties, business or marketing plans, studies or models, asset
20 valuations, pricing data, product or plan descriptions, or other similarly sensitive non-public
21 commercial, financial, or business matters or trade secrets.

22 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
23 well as their support staff).

24 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY CON-
25 FIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

26 2.5 Designating Party: a Party or Non-Party that designates information or items that
27 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” .

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the me-
2 dium 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 re-
4 sponses to discovery in this matter.

5 2.7 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 officer, director or employee of a Party
8 or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an of-
9 ficer, director or employee of a Party or of a Party's competitor.

10 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
11 Items: information as to which the Producing Party determines both of the following in good
12 faith: (1) such information contains non-public information of a competitively or commercially
13 sensitive, proprietary, financial or trade secret nature, or that involves or implicates privacy in-
14 terests; and (2) disclosure of such information to the Receiving Party or a Non-Party may be det-
15 rimental to the Producing Party's interests.

16 2.9 House Counsel: attorneys who are employees of a party to this action. House
17 Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
19 entity not named as a Party to this action.

20 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this ac-
21 tion but are retained to represent or advise a party to this action and have appeared in this action
22 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that par-
23 ty.

24 2.12 Party: any party to this action, including all of its officers, directors, employees,
25 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

26 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Ma-
27 terial in this action.

28 2.14 Professional Vendors: persons or entities that provide litigation support services

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

3 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
4 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

5 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
6 Producing Party.

7 3. SCOPE

8 3.1 The protections conferred by this Stipulation and Order cover not only Protected Ma-
9 terial (as defined above), but also (1) any information copied or extracted from Protected Materi-
10 al; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testi-
11 mony, conversations, or presentations by Parties or their Counsel that might reveal Protected
12 Material. However, the protections conferred by this Stipulation and Order do not cover the fol-
13 lowing information: (a) any information that is in the public domain at the time of disclosure to a
14 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
15 a result of publication not involving a violation of this Order, including becoming part of the
16 public record through trial or otherwise; and (b) any information known to the Receiving Party
17 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
18 obtained the information lawfully, in either case under no obligation of confidentiality to the
19 Designating Party. Any use of Protected Material at trial shall be governed by a separate agree-
20 ment or order.

21 3.2 Nothing in this Order shall prevent or restrict a Producing Party’s own disclosure or
22 use of its own Protected Material for any purpose.

23 3.3 Nothing in this Order shall be construed to prejudice any Party’s rights to use any
24 Protected Material in Court or in any Court filing with the written consent of the Designating
25 Party or by order of the Court or in accordance with the rules of this Court for filing documents
26 under seal.

27 3.4 This Order is without prejudice to the right of any Party to seek further or additional
28 protection of any Discovery Material or to modify this Order in any way, including, without

1 limitation, an order that certain matter not be produced at all.

2 3.5 Nothing in this Order shall be construed to prevent Outside Counsel of Record or
3 House Counsel from advising their clients with respect to this case in whole or in part upon Pro-
4 tected Materials, provided that the Protected Materials are not disclosed by such Counsel except
5 as provided in this Order.

6 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
16 or Non-Party that designates information or items for protection under this Order must take care
17 to limit any such designation to specific material that qualifies under the appropriate standards.
18 To the extent it is practical to do so, the Designating Party must designate for protection only
19 those parts of material, documents, items, or oral or written communications that qualify – so
20 that other portions of the material, documents, items, or communications for which protection is
21 not warranted are not swept unjustifiably within the ambit of this Order.

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

26 If it comes to a Designating Party's attention that information or items that it designated
27 for protection do not qualify for protection at all or do not qualify for the level of protection ini-
28 tially asserted, that Designating Party must promptly notify all other parties that it is withdrawing

1 the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
3 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Dis-
4 closure 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 Par-
9 ty affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” to each page that contains protected material. If only a portion or portions of the materi-
11 al on a page qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each por-
13 tion, the level of protection being asserted. For each document produced in a native file format
14 (e.g., a Microsoft Excel workbook file), the Producing Party shall: (i) stamp the appropriate con-
15 fidentiality designation on a slip-sheet of a TIFF image indicating that the document has been
16 produced in native format, along with the bates number of the produced document; and (ii) in-
17 clude in the load file accompanying the production a metadata field reflecting the document’s
18 confidentiality designation.

19 A Party or Non-Party that makes original documents or materials available for inspection
20 need not designate them for protection until after the inspecting Party has indicated which mate-
21 rial it would like copied and produced. During the inspection and before the designation, all of
22 the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL – AT-
23 TORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
24 copied and produced, the Producing Party must determine which documents, or portions thereof,
25 qualify for protection under this Order. Then, before producing the specified documents, the
26 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – AT-
27 TORNEYS’ EYES ONLY”) to each page that contains Protected Material. If
28 only a portion or portions of the material on a page qualifies for protection, the Producing Party

1 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins) and must specify, for each portion, the level of protection being asserted.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
4 the Designating Party identify on the record, before the close of the deposition, hearing, or other
5 proceeding, all protected testimony and specify the level of protection being asserted. When it is
6 impractical to identify separately each portion of testimony that is entitled to protection and it
7 appears that substantial portions of the testimony may qualify for protection, the Designating
8 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
9 a right to have up to 21 days from the date of the deposition to identify the specific portions
10 of the testimony as to which protection is sought and to specify the level of protection being asserted.
11 Only those portions of the testimony that are appropriately designated for protection with-
12 in the 21 days shall be covered by the provisions of this Stipulated Protective Order. Alternative-
13 ly, a Designating Party may specify, at the deposition or up to 21 days afterwards if that period is
14 properly invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

16 All Parties in this action shall have the presumptive right to attend all depositions and
17 other proceedings. Parties shall not have the right to attend the portions of such depositions or
18 proceedings that are, in good faith, reasonably expected to include HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY Protected Material. The Designating Party shall provide notice if
20 they, in good faith, reasonably expect a deposition, hearing or other proceeding to include
21 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Protected Material so that Parties
22 can ensure that only authorized individuals are present during the portions of those proceedings
23 that are, in good faith, reasonably expected to include HIGHLY CONFIDENTIAL – ATTOR-
24 NEYS’ EYES ONLY Protected Material. The use of a document as an exhibit at a deposition
25 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDEN-
26 TIAL – ATTORNEYS’ EYES ONLY.”

27 Transcripts containing Protected Material shall have an obvious legend on the title page
28 that the transcript contains Protected Material, and the title page shall be followed by a list of all

1 pages (including line numbers as appropriate) that have been designated as Protected Material
2 and the level of protection being asserted by the Designating Party. The Designating Party shall
3 inform the court reporter of these requirements. Any transcript that is prepared before the expira-
4 tion of a 21-day period for designation shall be treated during that period as if it had been desig-
5 nated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless oth-
6 erwise agreed. After the expiration of that period, the transcript shall be treated only as actually
7 designated.

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

14 5.3 Inadvertent Failures to Designate. If a Producing Party discovers that “CONFI-
15 DENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” information or
16 items that it produced were not designated as Protected Material, or that it produced information
17 or items that were designated as Protected Material but had designated them in the incorrect cat-
18 egory, the Producing Party may notify all other parties of the error and identify the affected in-
19 formation or items and their new designation or re-designation. Thereafter, the information or
20 items so designated or re-designated will be treated as Protected Material. After providing such
21 notice, the Producing Party shall provide re-labeled copies of the information or items to the Re-
22 ceiving Party reflecting the change in designation.

23 If timely corrected, an inadvertent failure to designate qualified information or items does
24 not, standing alone, waive the Designating Party’s right to secure protection under this Order for
25 such material. Upon timely correction of a designation, the Receiving Party must make reasona-
26 ble efforts to assure that the material is treated in accordance with the provisions of this Order.
27 Upon receiving the Protected Material with the correct confidentiality designation, the Receiving
28 Party shall return or securely destroy, at the Receiving Party’s option, all Discovery Material rea-

1 sonably accessible to the Receiving Party that was not designated properly. Unauthorized or in-
2 advertent disclosure does not change the status of Discovery Material or waive the right to hold
3 the disclosed document or information as Protected Material.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic bur-
8 dens, or a significant disruption or delay of the litigation, a Party does not waive its right to chal-
9 lenge a confidentiality designation by electing not to mount a challenge promptly after the origi-
10 nal designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution pro-
12 cess by providing written notice of each designation it is challenging and describing the basis for
13 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
14 must recite that the challenge to confidentiality is being made in accordance with this specific
15 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good
16 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms
17 of communication are not sufficient) within 14 days of the date of service of notice. In confer-
18 ring, the Challenging Party must explain the basis for its belief that the confidentiality designa-
19 tion was not proper and must give the Designating Party an opportunity to review the designated
20 material, to reconsider the circumstances, and, if no change in designation is offered, to explain
21 the basis for the chosen designation. A Challenging Party may proceed to the next stage of the
22 challenge process only if it has engaged in this meet and confer process first or establishes that
23 the Designating Party is unwilling to participate in the meet and confer process in a timely man-
24 ner.

25 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court inter-
26 vention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
27 Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)
28 within 30 days of the initial notice of challenge or within 21 days of the parties agreeing that the

1 meet and confer process will not resolve their dispute, whichever is earlier. After a total of 5
2 such motions have been filed by any Designating Party, the Challenging Party shall have the
3 burden of moving with respect to that Designating Party, although the burden of persuasion shall
4 remain on the Designating Party. Each such motion must be accompanied by a competent decla-
5 ration affirming that the movant has complied with the meet and confer requirements imposed in
6 the preceding paragraph. Failure by the Designating Party to make such a motion including the
7 required declaration within 30 days (or 21 days, if applicable) shall automatically waive the con-
8 fidentiality designation for each challenged designation. In addition, the Challenging Party may
9 file a motion challenging a confidentiality designation at any time if there is good cause for do-
10 ing so, including a challenge to the designation of a deposition transcript or any portions thereof.
11 Any motion brought pursuant to this provision must be accompanied by a competent declaration
12 affirming that the movant has complied with the meet and confer requirements imposed by the
13 preceding paragraph.

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

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
23 or produced by another Party or by a Non-Party in connection with this case only for prosecut-
24 ing, defending, or attempting to settle this litigation. Such Protected Material may be disclosed
25 only to the categories of persons and under the conditions described in this Order. When the liti-
26 gation has been terminated, a Receiving Party must comply with the provisions of section 15 be-
27 low (FINAL DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location and

1 in a secure manner¹ that ensures that access is limited to the persons authorized under this Order.

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

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as em-
6 ployees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
7 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A;

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

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

15 (d) the court and its personnel;

16 (e) court reporters, stenographers and videographers retained to record testimony
17 in this action and their staff, and professional jury or trial consultants, mock jurors and Profes-
18 sional Vendors to whom disclosure is reasonably necessary for this litigation and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is reason-
21 ably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Ex-
22 hibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of tran-
23 scribed deposition testimony or exhibits to depositions that reveal Protected Material must be
24 separately bound by the court reporter and may not be disclosed to anyone except as permitted
25 under this Stipulated Protective Order;

26 (g) the author or recipient of a document containing the information or a custodi-

27 _____
28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

1 an or other person who otherwise possessed or knew the information);

2 (h) any mediator who is assigned to hear this matter, and his or her staff, who
3 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

4 (i) any other person with the prior written consent of the Designating Party.

5 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” In-
6 formation or Items. Unless otherwise ordered by the court or permitted in writing by the Desig-
7 nating Party, a Receiving Party may disclose any information or item designated “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as em-
10 ployees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
11 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
12 Bound” that is attached hereto as Exhibit A;

13 (b) Designated House Counsel of the Receiving Party (1) who has no involvement
14 in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litiga-
15 tion, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and
16 (4) as to whom the procedures set forth in paragraph 7.4(a)(1) or 7.4(a)(2), below, have been fol-
17 lowed;

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

22 (d) the court and its personnel;

23 (e) court reporters, stenographers and videographers retained to record testimony
24 in this action and their staff, and professional jury or trial consultants, mock jurors and Profes-
25 sional Vendors to whom disclosure is reasonably necessary for this litigation and who have
26 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (f) the author or recipient of a document containing the information or a custodian
28 or other person who otherwise possessed or knew the information;

1 (g) any mediator who is assigned to hear this matter, and his or her staff, who
2 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

3 (h) any other person with the prior written consent of the Designating Party.

4 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
5 – ATTORNEYS’ EYES ONLY” Information or Items to Designated House Counsel or Experts.

6 (a)(1) Each party may disclose any information or item that has been designated
7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) to
8 its respective Designated House Counsel listed below:

9 California Physicians’ Service d/b/a Blue Shield of California: Charles L. Sweeris

10 Quest Diagnostics Incorporated and Quest Diagnostics Clinical Laboratories Incorpo-
11 rated: Paul Kattas, Dina Mack, Donna Salerno

12 Blue Cross and Blue Shield Association: Daniel Engel, Sybil Medie

13 Aetna, Inc.: Eric B. Myers, Paul Weller

14 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Desig-
15 nating Party, a Party that seeks to disclose to Designated House Counsel other than those Desig-
16 nated House Counsel listed in paragraph 7.4(a)(1) any information or item that has been desig-
17 nated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph
18 7.3(b) first must make a written request to the Designating Party that (1) sets forth the full name
19 of the Designated House Counsel and the city and state of his or her residence, and (2) describes
20 the Designated House Counsel’s current and reasonably foreseeable future primary job duties
21 and responsibilities in sufficient detail to determine if House Counsel is involved, or may be-
22 come involved, in any competitive decision-making.

23 (a)(3) Unless otherwise ordered by the court or agreed to in writing by the Desig-
24 nating Party, a Party may disclose any information or item that has been designated “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to Experts (as defined in this Order) retained
26 by the Receiving Party to assist in this action, provided that disclosure is only to the extent rea-
27 sonably necessary to perform such work, and provided that (i) such Expert is not a current of-
28 ficer, director, or employee of a Party or of a competitor of a Party, nor anticipated at the time of

1 retention to become an officer, director, or employee of a Party or of a competitor to a Party; (ii)
2 such Expert is not involved in competitive decision-making, as defined by *U.S. Steel v. United*
3 *States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party;
4 and (iii) such Expert has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
5 A). Such Experts shall not be permitted to provide advice, analysis, or recommendations to a
6 competitor of the Designating Party that concern the matters at issue in the above-entitled litiga-
7 tion, while the above-entitled litigation is pending, absent consent of the Designating Party.
8 Consent of the Designating Party shall not be withheld absent compelling ground.

9 Experts are hereby specifically notified that their written work product which con-
10 tains or discloses the substance of “CONFIDENTIAL” and/or “CONFIDENTIAL - ATTOR-
11 NEYS’ EYES ONLY” information is subject to all the provisions of this Protective Order. Out-
12 side Counsel of Record disclosing “CONFIDENTIAL” and/or “CONFIDENTIAL- ATTOR-
13 NEYS’ EYES ONLY” information to Experts shall be responsible for obtaining the executed
14 undertakings in advance of such disclosure and also shall retain the original executed copy of
15 said undertaking.

16 (b) A Party that makes a request and provides the information specified in the
17 preceding respective paragraphs may disclose the subject Protected Material to the identified
18 Designated House Counsel unless, within 14 days of delivering the request, the Party receives a
19 written objection from the Designating Party. Any such objection must set forth in detail the
20 grounds on which it is based.

21 (c) A Party that receives a timely written objection must meet and confer with the
22 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agree-
23 ment within seven days of the written objection. If no agreement is reached, the Party seeking to
24 make the disclosure to Designated House Counsel or the Expert may file a motion as provided in
25 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if ap-
26 plicable) seeking permission from the court to do so. Any such motion must describe the circum-
27 stances with specificity, set forth in detail the reasons why the disclosure to Designated House
28 Counsel is reasonably necessary, assess the risk of harm that the disclosure would entail, and

1 suggest any additional means that could be used to reduce that risk. In addition, any such motion
2 must be accompanied by a competent declaration describing the parties' efforts to resolve the
3 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and set-
4 ting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

5 In any such proceeding, the Party opposing disclosure to Designated House Counsel shall
6 bear the burden of proving that the risk of harm that the disclosure would entail (under the safe-
7 guards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its
8 Designated House Counsel.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
10 LITIGATION

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

14 (a) promptly notify in writing the Designating Party. Such notification shall in-
15 clude a copy of the subpoena or court order;

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

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

22 If the Designating Party timely seeks a protective order, the Party served with the
23 subpoena or court order shall not produce any information designated in this action as "CONFI-
24 DENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a deter-
25 mination by the court from which the subpoena or order issued, unless the Party has obtained the
26 Designating Party's permission. The Designating Party shall bear the burden and expense of
27 seeking protection in that court of its confidential material – and nothing in these provisions
28 should be construed as authorizing or encouraging a Receiving Party in this action to disobey a

1 lawful directive from another court.

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

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

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

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

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

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

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

27 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

28 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed

1 Protected Material to any person or in any circumstance not authorized under this Stipulated Pro-
2 tective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
3 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
4 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
5 made of all the terms of this Order, and (d) request such person or persons to execute the “Ac-
6 knowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
8 MATERIAL

9 Pursuant to Federal Rule of Evidence 502(b), the inadvertent production of mate-
10 rial subject to a claim of attorney-client privilege, work product protection or other privilege or
11 protection shall not constitute an automatic waiver of such privilege or protection. When a Pro-
12 ducing Party gives notice to Receiving Parties that certain inadvertently produced material is
13 subject to a claim of privilege or other protection, each Receiving Party must promptly return or
14 destroy the specified information and any copies it has and may not sequester, use or disclose the
15 information until the claim is resolved. This includes a restriction against presenting the infor-
16 mation to the court for a determination of the claim. This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for production
18 without prior privilege review.

19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
21 seek its modification by the court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Or-
23 der no Party waives any right it otherwise would have to object to disclosing or producing any
24 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
25 no Party waives any right to object on any ground to use in evidence of any of the material cov-
26 ered by this Protective Order.

27 12.3 Filing Protected Material. Without written permission from the Designating Party
28 or a court order secured after appropriate notice to all interested persons, a Party may not file in

1 the public record in this action any Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5 and General Order 62.

3 12.4 Termination of Matter and Retention of Jurisdiction. The Parties agree that the
4 terms of this Protective Order shall survive and remain in effect after the Final Disposition of the
5 above-captioned matter. The Court shall retain jurisdiction after Final Disposition of this matter
6 to hear and resolve any disputes arising out of this Protective Order for a period of six months.

7 12.5 Successors. This Order shall be binding upon the Parties hereto, their attorneys,
8 and their successors, executors, personal representatives, administrators, legal representatives,
9 assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any per-
10 sons or organizations over which they have direct control.

11 12.6 Modification by Court. This Order is subject to further court order based upon
12 public policy or other considerations, and the Court may modify this Order *sua sponte* in the in-
13 terests of justice. The United States District Court for the Northern District of California is re-
14 sponsible for the interpretation and enforcement of this Order. All disputes concerning Protected
15 Material, however designated, produced under the protection of this Order shall be resolved by
16 the United States District Court for the Northern District of California.

17 12.7 Discovery Rules Remain Unchanged. Identification of any individual pursuant to
18 this Order does not make that individual available for deposition or any other form of discovery
19 outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local
20 Rules for the United States District Court for the Northern District of California, or the Court's
21 own orders.

22 13. FINAL DISPOSITION

23 Within 60 days after the final disposition of this action, as defined in paragraph 4,
24 each Receiving Party must return all Protected Material to the Producing Party or destroy such
25 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, com-
26 pilations, summaries, and any other format reproducing or capturing any of the Protected Materi-
27 al. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
28 written certification to the Producing Party (and, if not the same person or entity, to the Designat-

1 ing Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Pro-
2 tected Material that was returned or destroyed and (2) affirms that the Receiving Party has not
3 retained any copies, abstracts, compilations, summaries or any other format reproducing or cap-
4 turing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to re-
5 tain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
6 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
7 product, and consultant and expert work product, even if such materials contain Protected Mate-
8 rial. Any such archival copies that contain or constitute Protected Material remain subject to this
9 Protective Order as set forth in Section 4 (DURATION).

10 Pursuant to Civil Local Rule 5-1(i)(3), the filer of this stipulation attests that he has ob-
11 tained concurrence in the filing of this document from each of the other Signatories.

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13
14 DATED: September 19, 2013

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand
5 the Stipulated Protective Order that was issued by the United States District Court for the North-
6 ern District of California on [date] in the case of *Rheumatology Diagnostics Laboratory, Inc., et*
7 *al., v. California Physicians' Service d/b/a Blue Shield of California, et al.*, Case No. 3:12-cv-
8 05847-WHO. I agree to comply with and to be bound by all the terms of this Stipulated Protec-
9 tive Order and I understand and acknowledge that failure to so comply could expose me to sanc-
10 tions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
11 manner any information or item that is subject to this Stipulated Protective Order to any person
12 or entity except in strict compliance with the provisions of this Order.
13

14 I further agree to submit to the jurisdiction of the United States District Court for the Northern
15 District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
16 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 num-
19 ber] as my California agent for service of process in connection with this action or any proceed-
20 ings 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]