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 Delphi Behavioral Health Group, LLC, and
 11 Elevate Recovery, LLC, d/b/a Elevate Recovery
 Center
 12

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

JST

16 HALCYON HORIZONS, INCORPORATED, a
 California corporation, d/b/a ELEVATE
 17 ADDICTION SERVICES,
 18 Plaintiff,
 19 vs.
 20 DELPHI BEHAVIORAL HEALTH GROUP,
 LLC, and ELEVATE RECOVERY, LLC, D/B/A
 21 ELEVATE RECOVERY CENTER,
 22 Defendants.

Case No.: 17-cv-1886-JSF

**STIPULATED PROTECTIVE ORDER FOR
 LITIGATION INVOLVING PATENTS,
 HIGHLY SENSITIVE CONFIDENTIAL
 INFORMATION AND/OR TRADE SECRETS**

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures
7 or responses to discovery and that the protection it affords from public disclosure and use extends
8 only to the limited information or items that are entitled to confidential treatment under the
9 applicable legal principles. The parties further acknowledge, as set forth in Section 12.4, below, that
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be
12 applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

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

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

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

21 2.4 [INTENTIONALLY OMITTED].

22 2.5 Designating Party: a Party or Non-Party that designates information or items that it
23 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

25 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
26 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
27 transcripts, and tangible things), that are produced or generated in disclosures or responses to
28 discovery in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
2 litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action, (2) is not a past or current employee of a Party, a Party's affiliate or related
4 company, or of a Party's competitor, and (3) at the time of retention, is not anticipated to become an
5 employee of a Party, a Party's affiliate or related company, or of a Party's competitor.

6 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items:
7 extremely sensitive "Confidential Information or Items," disclosure of which to another Party or
8 Non-Party would create a substantial risk of serious harm that could not be avoided by less
9 restrictive means.

10 2.9 [INTENTIONALLY OMITTED].

11 2.10 House Counsel: attorneys who are employees of a party to this action. House Counsel
12 does not include Outside Counsel of Record or any other outside counsel.

13 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal
14 entity not named as a Party to this action.

15 2.12 Outside Counsel of Record: attorneys who are not employees of a party to this action
16 but are retained to represent or advise a party to this action and have appeared in this action on
17 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

18 2.13 Party: any party to this action, including all of its officers, directors, employees,
19 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
21 Material in this action.

22 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
23 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
24 storing, or retrieving data in any form or medium) and their employees and subcontractors.

25 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
26 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

27 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
28 Producing Party.

1 3. SCOPE

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

15 4. DURATION

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

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
24 Non-Party that designates information or items for protection under this Order must take care to
25 limit any such designation to specific material that qualifies under the appropriate standards. To the
26 extent it is practical to do so, the Designating Party must designate for protection only those parts of
27 material, documents, items, or oral or written communications that qualify – so that other portions of
28 the material, documents, items, or communications for which protection is not warranted are not

1 swept unjustifiably within the ambit of this Order.

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

6 If it comes to a Designating Party's attention that information or items that it designated for
7 protection do not qualify for protection at all or do not qualify for the level of protection initially
8 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
9 mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
11 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
12 Discovery
13 Material that qualifies for protection under this Order must be clearly so designated before the
14 material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but
17 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
18 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
19 ONLY" to each page that contains protected material. If only a portion or portions of the material on
20 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
21 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
22 of protection being asserted.

23 A Party or Non-Party that makes original documents or materials available for inspection
24 need not designate them for protection until after the inspecting Party has indicated which material it
25 would like copied and produced. During the inspection and before the designation, all of the material
26 made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS'
27 EYES ONLY." After the inspecting Party has identified the documents it wants copied and
28 produced, the Producing Party must determine which documents, or portions thereof, qualify for

1 protection under this Order. Then, before producing the specified documents, the Producing Party
2 must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
3 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a portion or
4 portions of the material on a page qualifies for protection, the Producing Party also must clearly
5 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
6 specify, for each portion, the level of protection being asserted.

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

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

24 Transcripts containing Protected Material shall have an obvious legend on the title page that
25 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
26 (including line numbers as appropriate) that have been designated as Protected Material and the level
27 of protection being asserted by the Designating Party. The Designating Party shall inform the court
28 reporter of these requirements. Any transcript that is prepared before the expiration of a 21-day

1 period for designation shall be treated during that period as if it had been designated “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the
3 expiration of that period, the transcript shall be treated only as actually designated.

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

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the Designating Party’s
12 right to secure protection under this Order for such material. Upon timely correction of a
13 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
14 accordance with the provisions of this Order.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
19 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
20 confidentiality designation by electing not to mount a challenge promptly after the original
21 designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
23 by providing written notice of each designation it is challenging and describing the basis for each
24 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
25 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
26 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
27 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
28 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging

1 Party must explain the basis for its belief that the confidentiality designation was not proper and
2 must give the Designating Party an opportunity to review the designated material, to reconsider the
3 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
4 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
5 has engaged in this meet and confer process first or establishes that the Designating Party is
6 unwilling to participate in the meet and confer process in a timely manner.

7 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
8 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
9 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
10 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
11 will not resolve their dispute, whichever is earlier. Notwithstanding the above, after the
12 Challenging Party has made five Challenges that have resulted in motion practice under this section,
13 the burden to file a motion under this section shall shift to the Challenging Party (with the burden of
14 persuasion remaining with the Designating Party). Each such motion must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and confer
16 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
17 motion including the required declaration within 21 days (or 14 days, if applicable) shall
18 automatically waive the confidentiality designation for each challenged designation (except in those
19 instances where the burden of bringing the motion rests with the Challenging Party, in which case
20 the Challenging Party must bring the motion within 21 days). In addition, the Challenging Party may
21 file a motion challenging a confidentiality designation at any time if there is good cause for doing so,
22 including a challenge to the designation of a deposition transcript or any portions thereof. Any
23 motion brought pursuant to this provision must be accompanied by a competent declaration
24 affirming that the movant has complied with the meet and confer requirements imposed by the
25 preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the Designating
27 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
28 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.

1 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
2 retain confidentiality as described above, all parties shall continue to afford the material in question
3 the level of protection to which it is entitled under the Producing Party’s designation until the court
4 rules on the challenge.

5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by
15 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
16 information or item designated “CONFIDENTIAL” only to:

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

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

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

27 (d) the court and its personnel;

28 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,

1 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
2 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

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

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

19 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
20 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3)
21 who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to
22 whom the procedures set forth in paragraph 7.4, below, have been followed;

23 (c) Experts of the Receiving Party to whom disclosure is reasonably necessary for this
24 litigation; who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
25 ;

26 (d) the court and its personnel;

27 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
28 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who

1 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

2 (f) the author or recipient of a document containing the information or a custodian or
3 other person who otherwise possessed or knew the information.

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

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

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

20 (c) A Party that receives a timely written objection must meet and confer with the
21 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
22 within seven days of the written objection. If no agreement is reached, the Party seeking to make the
23 disclosure to Designated House Counsel may file a motion as provided in Civil Local Rule 7 (and in
24 compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so.
25 Any such motion must describe the circumstances with specificity, set forth in detail the reasons why
26 the disclosure to Designated House Counsel is reasonably necessary, assess the risk of harm that the
27 disclosure would entail, and suggest any additional means that could be used to reduce that risk. In
28 addition, any such motion must be accompanied by a competent declaration describing the parties’

1 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
2 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
3 approve the disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this Stipulated
27 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
28 of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the

1 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of
2 all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment
3 and Agreement to Be Bound” that is attached hereto as Exhibit A.

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

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

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
16 its modification by the court in the future.

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

22 [12.3 [INTENTIONALLY OMITTED].

23 12.4 Filing Protected Material. Without written permission from the Designating Party or a
24 court order secured after appropriate notice to all interested persons, a Party may not file in the
25 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
26 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
27 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
28 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the

1 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
2 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
3 to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected
4 Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by
5 the court.

6 13. FINAL DISPOSITION

7 Within 60 days after the final disposition of this action, as defined in paragraph 4,
8 each Receiving Party must return all Protected Material to the Producing Party or destroy such
9 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
10 compilations, summaries, and any other format reproducing or capturing any of the Protected
11 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a
12 written certification to the Producing Party (and, if not the same person or entity, to the Designating
13 Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
14 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any
15 copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the
16 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of
17 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
18 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
19 and expert work product, even if such materials contain Protected Material. Any such archival copies
20 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
21 Section 4 (DURATION).

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

23
24 Dated: June 8, 2017

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Telephone: (650) 521-5930
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Attorneys for Plaintiff

Dated: June 8, 2017

By: /s/ Peter E. Soskin
Seth A. Gold
Rebecca Liu
Peter E. Soskin
K&L GATES LLP

Attorneys for Defendants
Delphi Behavioral Health Group, LLC and Elevate
Recovery, LLC d/b/a Elevate Recovery Center

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: June 13, 2017



Hon. John S. Tigar
United States District/Magistrate Judge

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
5 its entirety and understand the Stipulated Protective Order that was issued by the United States
6 District Court for the Northern District of California on [date] in the case of _____ [**insert**
7 **formal name of the case and the number and initials assigned to it by the court**]. I agree to
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

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

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____
24 [printed name]

25 Signature: _____
26 [signature]

27
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