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

17 CHARLES DES ROCHES, on his own  
18 behalf and on behalf of his beneficiary  
son, R.D., and all others similarly  
19 situated, and SYLVIA MEYER, on her  
own behalf and all others similarly  
20 situated,

21 Plaintiff,

22 vs.

23 CALIFORNIA PHYSICIANS'  
SERVICE d/b/a BLUE SHIELD OF  
24 CALIFORNIA; HUMAN AFFAIRS  
INTERNATIONAL OF  
25 CALIFORNIA; and MAGELLAN  
HEALTH SERVICES OF  
26 CALIFORNIA, INC.—EMPLOYER  
SERVICES,

27 Defendant.  
28

Case No. 16-cv-02848-LHK

Hon. Lucy H. Koh

~~PROPOSED~~ PROTECTIVE  
ORDER

[Re: Dkt. 47]

**MODIFIED BY THE COURT**

PROTECTIVE ORDER

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11 CALIFORNIA PHYSICIANS' SERVICE  
d/b/a BLUE SHIELD OF CALIFORNIA  
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1        1.    PURPOSES AND LIMITATIONS

2            Disclosure and discovery activity in this action are likely to involve  
3 production of confidential, proprietary, or private information for which special  
4 protection from public disclosure and from use for any purpose other than  
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
6 stipulate to and petition the court to enter the following Stipulated Protective  
7 Order. The parties acknowledge that this Order does not confer blanket protections  
8 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  
10 entitled to confidential treatment under the applicable legal principles. The parties  
11 further acknowledge, as set forth in Section 13.3, below, that this Stipulated  
12 Protective Order does not entitle them to file confidential information under seal;  
13 Civil Local Rule 79-5 sets forth the procedures that must be followed and the  
14 standards that will be applied when a party seeks permission from the court to file  
15 material under seal.

16        2.    HIPAA AND PRIVACY PROTECTIONS

17            The parties acknowledge that information produced in discovery, regardless  
18 of its designation under this Order, may contain personal and health information  
19 subject to the protections of, inter alia, the Health Insurance Portability and  
20 Accountability Act of 1996 (“HIPAA”), the applicable requirements of the  
21 Standards for Privacy of Individually Identifiable Health Information and its  
22 implementing regulations issued by the U.S. Department of Health and Human  
23 Services (45 C.F.R. Parts 160-64; HIPAA Privacy Regulations), and California  
24 Civil Code §§ 56 et seq., and 1798.82 et seq. (collectively “Privacy Laws”), which  
25 protect the confidentiality of individually identifiable personal and health  
26 information (“Protected Information”). The parties and all third-party signatories to  
27 this Protective Order agree to take all measures necessary to comply with the  
28 requirements of the Privacy Laws and any other applicable laws governing the

1 privacy of personal and health information. Such measures include, but are not  
2 limited to, the development, implementation, maintenance and use of appropriate  
3 administrative, technical and physical safeguards, in compliance with the Privacy  
4 Laws and applicable state and federal laws, to preserve the integrity,  
5 confidentiality, and availability of Protected Information. The parties and all third-  
6 party signatories to this Protective Order expressly agree that the citations to the  
7 Privacy Laws in this paragraph are for convenience only and that it remains the  
8 obligation of each party to the action and third-party signatory to understand and  
9 comply with the obligations imposed by the Privacy Laws and any other  
10 potentially applicable state and federal law.

11 The parties further acknowledge that information produced in discovery may  
12 contain personal and health information subject to the protections of 42 C.F.R. Part  
13 2, because it may identify a patient as an alcohol or drug abuser either directly, by  
14 reference to other publicly available information, or through verification of such  
15 identification by another person (“Protected Substance Abuse Information”). 42  
16 C.F.R. Part 2 prohibits the use of Protected Substance Abuse Information as  
17 evidence in a non-criminal case without first providing notice to the patient and an  
18 opportunity to respond, unless, upon application by any person having a legally  
19 recognized interest in the disclosure, the Court issues an order authorizing the  
20 disclosure of the specified patient records.

21 The parties agree that Defendants will redact personally identifying  
22 information about the absent putative class members prior to producing Protected  
23 Substance Abuse Information to the extent practicable, including member names,  
24 addresses, dates of birth, social security numbers, and member or subscriber ID  
25 numbers. Member or subscriber ID numbers will be (1) partially redacted, leaving  
26 unredacted at least that portion of the numbers that allows the parties to distinguish  
27 between members or subscribers, or (2) randomized in such a way that the  
28 member’s masked ID number will be consistently masked such that the parties can

1 identify documents relating to a common member. The parties recognize that the  
2 name of the members' health plan; the date(s) and location of treatment; and date(s)  
3 of benefit coverage determination(s) may be relevant to the parties' assessment of  
4 this case, and therefore agree that such information will not be redacted prior to  
5 production. The parties believe that, as redacted, this discovery no longer  
6 constitutes Protected Substance Abuse Information. In the event that Protected  
7 Substance Abuse Information is disclosed within the unredacted portions of the  
8 discovery information, individual notice to the putative class members is deemed to  
9 be impractical and inadvisable and good cause for the order exists. Any disclosure  
10 of the information subject to the criteria and procedures specified in 42 CFR § 2.64  
11 shall be designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
12 ONLY" with the associated protections and restrictions set forth in this Stipulated  
13 Protective Order.

14 3. DEFINITIONS

15 3.1 Challenging Party: a Party or Non-Party that challenges the  
16 designation of information or items under this Order.

17 3.2 "CONFIDENTIAL" Information or Items: information (regardless of  
18 how it is generated, stored or maintained) or tangible things that qualify for  
19 protection under Federal Rule of Civil Procedure 26(c). The term  
20 CONFIDENTIAL shall also include:

21 a. health information ("PHI") which is defined as any information,  
22 whether oral or recorded in any form or medium, that:

23 (i) is created by a health care provider, health plan, mental  
24 health service administrator, public authority, employer, insurance provider,  
25 school, university or health care clearinghouse; and

26 (ii) relates to the past, present or future physical or mental  
27 health or condition of an individual, the provision or receipt of health care to or by  
28 an individual, or the past, present or future payment for the provision of health care

1 to an individual;

2 b. policyholder-specific information, including private medical  
3 information;

4 c. information that is proprietary or constitutes a trade secret,  
5 including, without limitation, materials, and other documents reflecting non-public  
6 business or financial strategies and confidential competitive information that, if  
7 disclosed, could result in prejudice or harm to the disclosing party;

8 d. non-public financial projections, analyses, or studies; and

9 e. non-public communications with regulators, Departments of  
10 Insurance, or other governmental bodies that are intended to be kept confidential or  
11 are protected from disclosure by statute or regulation.

12 3.3 Counsel (without qualifier): Outside Counsel of Record and House  
13 Counsel (as well as their support staff).

14 3.4 Designating Party: a Party or Non-Party that designates information or  
15 items that it produces in disclosures or in responses to discovery as  
16 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
17 ONLY.”

18 3.5 Disclosure or Discovery Material: all items or information, regardless  
19 of the medium or manner in which it is generated, stored, or maintained (including,  
20 among other things, testimony, transcripts, and tangible things), that are produced  
21 or generated in disclosures or responses to discovery in this matter.

22 3.6 Expert: a person with specialized knowledge or experience in a matter  
23 pertinent to the litigation who has been retained by a Party or its counsel to serve  
24 as an expert witness or as a consultant in this action.

25 3.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
26 Information or Items: extremely sensitive “Confidential Information or Items,”  
27 disclosure of which to another Party or Non-Party would create a substantial risk of  
28 serious harm that could not be avoided by less restrictive means.

1           3.8 House Counsel: attorneys who are employees of a party to this action.  
2 House Counsel does not include Outside Counsel of Record or any other outside  
3 counsel.

4           3.9 Non-Party: any natural person, partnership, corporation, association,  
5 or other legal entity not named as a Party to this action.

6           3.10 Outside Counsel of Record: attorneys who are not employees of a  
7 party to this action but are retained to represent or advise a party to this action and  
8 have appeared in this action on behalf of that party or are affiliated with a law firm  
9 which has appeared on behalf of that party.

10          3.11 Party: any party to this action, including all of its officers, directors,  
11 employees, consultants, retained experts, and Outside Counsel of Record (and their  
12 support staffs).

13          3.12 Producing Party: a Party or Non-Party that produces Disclosure or  
14 Discovery Material in this action.

15          3.13 Professional Vendors: persons or entities that provide litigation  
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
18 and their employees and subcontractors.

19          3.14 Protected Material: any Disclosure or Discovery Material that is  
20 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY.”

22          3.15 Receiving Party: a Party that receives Disclosure or Discovery  
23 Material from a Producing Party.

24 4. SCOPE

25          The protections conferred by this Stipulation and Order cover not only  
26 Protected Material (as defined above), but also (1) any information copied or  
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
28 compilations of Protected Material; and (3) any testimony, conversations, or



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

12 5. DURATION

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

21 6. DESIGNATING PROTECTED MATERIAL

22 6.1 Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Non-Party that designates information or items for protection under  
24 this Order must take care to limit any such designation to specific material that  
25 qualifies under the appropriate standards. The Designating Party must designate for  
26 protection only those parts of material, documents, items, or oral or written  
27 communications that qualify – so that other portions of the material, documents,  
28 items, or communications for which protection is not warranted are not swept

1 unjustifiably within the ambit of this Order.

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

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

10 6.2 Manner and Timing of Designations. Except as otherwise provided in  
11 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
12 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
13 under this Order must be clearly so designated before the material is disclosed or  
14 produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic  
17 documents, but excluding transcripts of depositions or other pretrial or trial  
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or  
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that  
20 contains protected material. If only a portion or portions of the material on a page  
21 qualifies for protection, the Producing Party also must clearly identify the  
22 protected portion(s) (e.g., by making appropriate markings in the margins). A Party  
23 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  
25 which material it would like copied and produced. During the inspection and  
26 before the designation, all of the material made available for inspection shall be  
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
28 documents it wants copied and produced, the Producing Party must determine

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

8 (b) for testimony given in deposition or in other pretrial or trial  
9 proceedings, that the Designating Party identify on the record, before the close of  
10 the deposition, hearing, or other proceeding, all protected testimony, or by marking  
11 within fifteen (15) days after the receipt of a final transcript of such deposition the  
12 portions of the transcript to be designated as Confidential. During the deposition, if  
13 Confidential information or material is to be disclosed, prior to such disclosure any  
14 person not authorized to receive Confidential information shall be excluded from  
15 the deposition until testimony regarding those matters has been concluded. If any  
16 testimony in a deposition or any writing or information used during the course of a  
17 deposition is designated as Confidential, the portion of the deposition record  
18 reflecting such material shall be stamped with the appropriate designation and  
19 access thereto shall be limited pursuant to the terms of this Order. The terms of this  
20 Order shall apply to videotaped depositions, and video cassettes or other video  
21 containers shall be labeled in accordance with the terms of this Order.

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

1           6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
2 failure to designate qualified information or items does not, standing alone, waive  
3 the Designating Party's right to secure protection under this Order for such  
4 material. Upon timely correction of a designation, the Receiving Party must make  
5 reasonable efforts to assure that the material is treated in accordance with the  
6 provisions of this Order.

7           7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8           7.1 Timing of Challenges. Any Party or Non-Party may challenge a  
9 designation of confidentiality at any time. Unless a prompt challenge to a  
10 Designating Party's confidentiality designation is necessary to avoid foreseeable,  
11 substantial unfairness, unnecessary economic burdens, or a significant disruption  
12 or delay of the litigation, a Party does not waive its right to challenge a  
13 confidentiality designation by electing not to mount a challenge promptly after the  
14 original designation is disclosed.

15           7.2 Meet and Confer. The Challenging Party shall initiate the dispute  
16 resolution process by providing written notice of each designation it is challenging  
17 and describing the basis for each challenge. To avoid ambiguity as to whether a  
18 challenge has been made, the written notice must recite that the challenge to  
19 confidentiality is being made in accordance with this specific paragraph of the  
20 Protective Order. The parties shall attempt to resolve each challenge in good faith  
21 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  
23 notice. In conferring, the Challenging Party must explain the basis for its belief that  
24 the confidentiality designation was not proper and must give the Designating Party  
25 an opportunity to review the designated material, to reconsider the circumstances,  
26 and, if no change in designation is offered, to explain the basis for the chosen  
27 designation. A Challenging Party may proceed to the next stage of the challenge  
28 process only if it has engaged in this meet and confer process first or establishes

1 that the Designating Party is unwilling to participate in the meet and confer process  
2 in a timely manner.

3 7.3 **Judicial Intervention.** If the Parties cannot resolve a challenge without  
4 **they shall comply with the undersigned's Standing Order re Civil Discovery**  
5 **Disputes** ~~the Challenging Party may file and serve a motion to remove or~~  
6 ~~after the confidentiality designation under Civil Local Rule 7 (and in compliance~~  
7 ~~with Civil Local Rule 79-5, if applicable) within 14 days of the parties agreeing~~  
8 ~~that the meet and confer process will not resolve their dispute. Each such motion~~  
9 ~~must set forth good cause and be accompanied by a competent declaration~~  
10 ~~affirming that the movant has~~ **In each Discovery**  
11 **Dispute Joint Report (DDJR), the parties must attest that they have**  
12 **complied with the meet and confer requirements** imposed in the preceding paragraph.

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

## 19 8. ACCESS TO AND USE OF PROTECTED MATERIAL

20 8.1 Basic Principles. A Receiving Party may use Protected Material that is  
21 disclosed or produced by another Party or by a Non-Party in connection with this  
22 case only for prosecuting, defending, or attempting to settle this litigation. Such  
23 Protected Material may be disclosed only to the categories of persons and under  
24 the conditions described in this Order. When the litigation has been terminated, a  
25 Receiving Party must comply with the provisions of section 14 below (FINAL  
26 DISPOSITION).

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

8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a  
2 Receiving Party may disclose any information or item designated

3 “CONFIDENTIAL” only to:

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

7 (b) the officers, directors, and employees (including House Counsel) of  
8 the Receiving Party to whom disclosure is reasonably necessary for this litigation;

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff, and Professional Vendors to whom  
14 disclosure is reasonably necessary for this litigation;

15 (f) professional jury or trial consultants and mock jurors to whom  
16 disclosure is reasonably necessary for this litigation and who have signed the  
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (g) during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary. Pages of transcribed deposition testimony or exhibits to  
20 depositions that reveal Protected Material must be separately bound by the court  
21 reporter and may not be disclosed to anyone except as permitted under this  
22 Stipulated Protective Order.

23 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
24 ONLY” Information or Items. Unless otherwise ordered by the court or permitted  
25 in writing by the Designating Party, a Receiving Party may disclose any  
26 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
27 EYES ONLY” only to:

28 (a) the Receiving Party’s Outside Counsel of Record in this action, as

1 well as employees of said Outside Counsel of Record to whom it is reasonably  
2 necessary to disclose the information for this litigation;

3 (b) Designated House Counsel of the Receiving Party to whom disclosure  
4 is reasonably necessary for this litigation;

5 (c) Experts (as defined in this Order) of the Receiving Party (1) to whom  
6 disclosure is reasonably necessary for this litigation, and (2) who have signed the  
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (d) the court and its personnel;

9 (e) court reporters and their staff, and Professional Vendors to whom  
10 disclosure is reasonably necessary for this litigation

11 (f) professional jury or trial consultants and mock jurors to whom  
12 disclosure is reasonably necessary for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (g) during their depositions, witnesses in the action to whom disclosure is  
15 reasonably necessary and who have signed the “Acknowledgment and Agreement  
16 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or  
17 ordered by the court. However, current employees of Defendants can be shown  
18 any information or item designated “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY” during their depositions without having signed the  
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A). Pages of transcribed  
21 deposition testimony or exhibits to depositions that reveal Protected Material must  
22 be separately bound by the court reporter and may not be disclosed to anyone  
23 except as permitted under this Stipulated Protective Order.

24 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
25 IN OTHER LITIGATION

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

1 ONLY,” that Party must:

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

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

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

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

19 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
20 PRODUCED IN THIS LITIGATION

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

27 (b) In the event that a Party is required, by a valid discovery request, to  
28 produce a Non-Party’s confidential information in its possession, and the Party is



1 subject to an agreement with the Non-Party not to produce the Non-Party's  
2 confidential information, then the Party shall:

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

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

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

11 (c) If the Non-Party fails to object or seek a protective order from this  
12 court within 14 days of receiving the notice and accompanying information, the  
13 Receiving Party may produce the Non-Party's confidential information responsive  
14 to the discovery request. If the Non-Party timely seeks a protective order, the  
15 Receiving Party shall not produce any information in its possession or control that  
16 is subject to the confidentiality agreement with the Non-Party before a  
17 determination by the court. Absent a court order to the contrary, the Non-Party  
18 shall bear the burden and expense of seeking protection in this court of its  
19 Protected Material. **All Non-Party disclosure and discovery disputes are subject to the  
undersigned's Standing Order re Civil Discovery Disputes.**

20 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 A.

2 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
3 PROTECTED MATERIAL

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

14 13. MISCELLANEOUS

15 13.1 Right to Further Relief. Nothing in this Order abridges the right of any  
16 person to seek its modification by the court in the future.

17 13.2 Right to Assert Other Objections. By stipulating to the entry of this  
18 Protective Order no Party waives any right it otherwise would have to object to  
19 disclosing or producing any information or item on any ground not addressed in  
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
21 any ground to use in evidence of any of the material covered by this Protective  
22 Order.

23 13.3 Filing Protected Material. Without written permission from the  
24 Designating Party or a court order secured after appropriate notice to all interested  
25 persons, a Party may not file in the public record in this action any Protected  
26 Material. A Party that seeks to file under seal any Protected Material must comply  
27 with Civil Local Rule 79-5. Protected Material may only be filed under seal  
28 pursuant to a court order authorizing the sealing of the specific Protected Material

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

8 14. FINAL DISPOSITION

9 Within 60 days after the final disposition of this action, as defined in  
10 paragraph 4, each Receiving Party must return all Protected Material to the  
11 Producing Party or destroy such material. As used in this subdivision, "all  
12 Protected Material" includes all copies, abstracts, compilations, summaries, and  
13 any other format reproducing or capturing any of the Protected Material. Whether  
14 the Protected Material is returned or destroyed, the Receiving Party must submit a  
15 written certification to the Producing Party (and, if not the same person or entity, to  
16 the Designating Party) by the 60 day deadline that (1) identifies (by category,  
17 where appropriate) all the Protected Material that was returned or destroyed and  
18 (2) affirms that the Receiving Party has not retained any copies, abstracts,  
19 compilations, summaries or any other format reproducing or capturing any of the  
20 Protected Material. Notwithstanding this provision, Counsel are entitled to retain  
21 an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
23 reports, attorney work product, and consultant and expert work product, even if  
24 such materials contain Protected Material. Any such archival copies that contain or  
25 constitute Protected Material remain subject to this Protective Order as set forth in  
26 Section 5 (DURATION).

27 15. PRIVILEGE LOGS

28 Any content or material redacted or withheld from production on grounds of

1 any privilege and/or immunity, including without limitation the attorney work-  
2 product doctrine and the attorney-client privilege, shall be recorded in accordance  
3 with Fed. R. Civ. P. 26(b)(5). Privilege logs will be produced as Excel  
4 spreadsheets in searchable PDF format. Documents or other materials withheld in  
5 whole or in part from production that a Party believes to be covered by a privilege  
6 or immunity shall be logged on a document-by-document basis, except as  
7 identified below. The following information must be provided (as applicable) in  
8 the privilege log for each document or portion thereof withheld: (1) document  
9 identification number; (2) document type; (3) attachments; (4) date; (5) author; (6)  
10 recipients; (7) copyees; (8) privilege, immunity, or other protection claimed; (9)  
11 description of the document including information sufficient to establish the  
12 elements of each asserted privilege, immunity, or ground for protection.

13 For those documents that contain a series of e-mails in a single document  
14 (“email string”), it shall be sufficient to log the string without separate logging of  
15 each included e-mail, but reference to the document as an “email string” shall be  
16 made in the document description field of the log and all participants in the string  
17 shall be identified by type (e.g., from, to, cc, bcc). Email strings that are not  
18 privileged in their entirety should be redacted with labels reflecting the nature of  
19 the privilege; the document logged; and the non-privileged portions produced. All  
20 counsel or their employees (or direct reports for in-house counsel) shall be  
21 identified as such in the privilege log, such as in a chart or key. Further, for each  
22 individual listed on the log, the Party shall identify the party or company for which  
23 (s)he works.

## 24 16. PRODUCTION OF ELECTRONICALLY STORED INFORMATION

25 16.1 Preservation. The parties have met and conferred about their  
26 preservation obligations and needs and agree that preservation of potentially  
27 relevant Electronically Stored Information (“ESI”) will be reasonable and  
28 proportionate. The parties agree to meet and confer further about the types of ESI

1 they believe should be preserved and the custodians, or general job titles or  
2 descriptions of custodians, for whom they believe ESI should be preserved. The  
3 parties will agree on the number of custodians per party for whom ESI will be  
4 preserved.

5 16.2 Search. The parties agree that in responding to a Fed. R. Civ. P. 34  
6 request, or earlier if appropriate, they will meet and confer about methods to search  
7 ESI in order to identify ESI that is subject to production in discovery and filter out  
8 ESI that is not subject to discovery.

9 16.3 Production Formats. The parties agree that electronic information will  
10 be provided in single page Tag Image File Format (“TIFF”) images. If particular  
11 documents warrant a different format, the parties will cooperate to arrange for the  
12 mutually acceptable production of such documents. The parties agree to meet and  
13 confer about the types of metadata that will be produced for all ESI, to the extent  
14 such metadata exists. No party is required to create metadata for ESI that does not  
15 exist for that ESI.

16 16.4 Objections to ESI Production. If any formatting requirements or other  
17 specifications agreed to in this Stipulated Protective Order are later determined by  
18 the producing party to be not feasible, or unduly burdensome or unreasonably  
19 costly, the parties will meet and confer in order to attempt to agree upon  
20 appropriate modifications before presenting any such issue to the Court.

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22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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Dated: September 6, 2016

GRANT & EISENHOFER P.A.

By: /s/ Daniel L. Berger  
Daniel L. Berger  
Attorneys for Plaintiffs  
DES ROCHES, MEYER, AND PROPOSED  
CLASS

Dated: September 6, 2016

CROWELL & MORING, LLP

By: /s/ Jennifer S. Romano  
Jennifer S. Romano  
Attorneys for Defendants  
HUMAN AFFAIRS INTERNATIONAL OF  
CALIFORNIA AND MAGELLAN  
HEALTH SERVICES OF CALIFORNIA,  
INC.

Dated: September 6, 2016

MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Joseph E. Laska  
Joseph E. Laska  
Attorneys for Defendant  
CALIFORNIA PHYSICIANS' SERVICE  
dba BLUE SHIELD OF CALIFORNIA

**AS MODIFIED BY THE COURT,  
PURSUANT TO STIPULATION, IT IS SO ORDERED.**

^

DATED: September 7, 2016

  
\_\_\_\_\_  
Judge Lucy H. Koh Howard R. Lloyd  
United States District Judge  
Magistrate

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  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Northern District of  
7 California on [date] in the case of *Charles Des Roches, et al. v. California*  
8 *Physicians' Service dba Blue Shield of California, et al.*, Case No. 5:16-cv-02848.

9 I agree to comply with and to be bound by all the terms of this Stipulated  
10 Protective Order and I understand and acknowledge that failure to so comply could  
11 expose me to sanctions and punishment in the nature of contempt. I solemnly  
12 promise that I will not disclose in any manner any information or item that is  
13 subject to this Stipulated Protective Order to any person or entity except in strict  
14 compliance with the provisions of this Order.

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

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

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

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

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

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

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