

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE SUBOXONE) Case No. 1:24-md-3092
(BUPRENORPHINE/NALOXONE))
FILM PRODUCTS LIABILITY) MDL No. 3092
LITIGATION)
) Judge J. Philip Calabrese
This Document Applies to All Cases)
)



CASE MANAGEMENT ORDER NO. 5
DESIGNATION AND HANDLING OF PROTECTED INFORMATION

Based on the respective proposals of counsel, and with the Court being fully advised as to the same and for good cause shown, the Court **ORDERS** as follows:

A. Applicability

1. This Order shall govern for pre-trial purposes the handling of documents, depositions, deposition exhibits, interrogatory responses, responses to requests for admissions, responses to requests for production of documents, and all other discovery obtained during the course of this case (referred to as “Discovery Material”). All references to “Party,” “Receiving Party,” “Producing Party,” or “Designating Party” throughout this Order are intended to include non-parties.

2. The Parties acknowledge that this Order does not confer blanket protections on all disclosures, responses to discovery, or testimony and that the protection it affords extends only to the information or items that are entitled to protection under the terms of this Order and any other applicable law. The Parties also acknowledge that neither this Order—nor the confidentiality designations

thereunder—constitutes a ruling by this Court that any specific information is, in fact, confidential.

3. The Parties may agree to extend any of the deadlines contained in this Order. A Party shall agree to any reasonable request for such an extension unless doing so would adversely affect the Party, and nothing in this Order prevents a Party from seeking more time from the Court.

B. Definitions

1. Action.

The above-captioned action, inclusive of the individual actions filed.

2. Party.

Any party to this Action.

3. Non-Party.

Any individual, corporation, association, or other natural person or entity that is not a Party to this Action.

4. Receiving Party.

A Party or Non-Party that received Discovery Material from a Producing Party.

5. Producing Party.

A Party or Non-party that produces Discovery Material in this Action.

6. Designating Party.

A Party or Non-party that designates information or items that it produces in disclosures or responses to discovery or provides in the form of deposition testimony as Protected Information.

7. Outside Counsel.

Any attorney at the Parties' outside firms in this Action.

8. Designated Expert Personnel.

Persons retained by the individual expert to complete their respective report or members, partners, employees, or agents of an expert consulting firm as the expert consulting firm shall designate as the persons who will undertake the engagement on behalf of the expert consulting firm.

9. Challenging Party.

A Party that elects to initiate a challenge to a Designating Party's confidentiality designation.

10. Confidential Information.

Material or information that constitutes, reflects, discloses, or contains:

- a. information protected from disclosure by any applicable State or federal statute or regulation;
- b. research, design, development, financial, technical, marketing, planning, regulatory, manufacturing, or commercial information that the Designating Party has maintained as confidential;
- c. trade secrets (except as provided in ¶ 11); or
- d. any Protected Data.

Any Designating Party to this Order may mark the same with the following legend: "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or substantially similar designation. Confidential material, including without limitation any information,

document, thing, interrogatory answer, admission, pleading, or testimony, may be marked with this legend.

11. Highly Confidential Information.

Confidential Information which would create a substantial risk of competitive or business injury to a Producing Party if disclosed in violation of Section K of this Order. Highly Confidential Information shall mean materials that include trade secrets, highly sensitive and non-public research and analysis, design, development, film manufacturing specifications, techniques, processes, apparatus, and analytics, manufacturing formulation processes and technical data, confidential business information such as non-public strategic information regarding current and future business or development plans (including past if indicative of current practices), cost data, pricing information and formulas, customer information and vendor data, financial, marketing, and strategic business planning, non-public information relating to pending or abandoned patent applications, or communications regarding any of the foregoing materials. Subject to this Order, any Defendant shall have the right to designate as “Highly Confidential” any information, document, or thing, or portion of any document or thing as defined above and may mark it with the following legend: “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or substantially similar designation.

12. Protected Data.

a. Protected Data shall refer to any information that a Party believes in good faith to be subject to federal, state, or foreign Data Protection Laws or other regulatory privacy obligations, including but not

limited to Personal Health Information (“PHI”) and Personally Identifiable Information (“PII”). Protected Data constitutes highly sensitive materials requiring special protection. Examples of such Data Protection Laws include, without limitation, The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.* (financial information); The Health Insurance Portability and Accountability Act and the regulations thereunder, 45 C.F.R. Part 160 and Subparts A and E of Part 164 (medical information); the *General Data Protection Regulation (GDPR)*: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ 2016 L 119/1; and United Kingdom Data Protection Act 2018 (“DPA” or “UK GDPR”) and all amendments, supplementary rules and regulations thereto.

b. Certain Protected Data may compel alternative or additional protections beyond those afforded Confidential Information, in which event the Parties shall meet and confer in good faith, and, if unsuccessful, shall raise the issue with the Court pursuant to Local Rule 37.1.

c. Any Party that produces information in this Action that contains data subject to federal, State, or foreign data protection laws has the right to designate those documents (whether paper or electronic) as “Confidential.” Any Designating Party to this Order, who produces or discloses any Protected Data material, including without limitation any information, document, thing,

interrogatory answer, admission, pleading, or testimony, may mark the same with the following legend: “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or substantially similar designation. For avoidance of all doubt, all medical records produced in this case shall be designated Confidential and treated as PHI in accordance with the HIPAA Qualified Protective Order.

13. Protected Information.

The term “Protected Information” means, collectively, information designated as “Confidential” or “Highly Confidential” or substantially similar designation. As used in the following paragraphs, the phrase Protected Information includes Confidential and Highly Confidential designations.

14. TIFF.

A widely used and supported graphic file format for storing bit-mapped images, with many different compression formats and resolutions.

15. Native Format.

An electronic document’s associated file structure defined by the original creating application. For example, the Native Format of an Excel workbook is a .xls or .xlsx file.

C. Designation of Material as Protected Information

1. Any Producing Party may designate Discovery Material as Protected Information under the terms of this Order if the Producing Party in good faith reasonably believes that such Discovery Material meets the definitions provided in the Order.

2. A Party or Non-party may **not** designate as Protected Information any of the following:

- a. Any information that is legally in the public domain at the time of disclosure to the Receiving Party, or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order. This includes any public information posted by a Party or Non-Party that subsequently is made unavailable by removal from the public view (*e.g.*, deleted or closed websites or social-media posts); and/or
- b. Any information known to the Receiving Party before the disclosure or lawfully obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.
- c. If a Receiving Party challenges the designation of any material as Protected Information under C.2.a. or C.2.b., the Producing Party bears the burden to show that the material was not in the public domain or that the information was not lawfully obtained by the source who disclosed information to the Receiving Party (C.2.b.).

D. Manner of Designation of Material as Protected Information

1. The designation of Discovery Material as Protected Information for purposes of this Order shall be made in the following manner:

a. TIFF or PDF Documents.

In the case of documents or other materials containing Protected Information produced in TIFF or PDF format (apart from depositions, pre-trial testimony, or medical records), the Producing Party shall affix the applicable legend of “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or substantially similar designation to all pages in each document containing any Protected Information.

b. Native Documents.

In the case of documents containing Protected Information produced in Native Format, the Designating Party shall include the applicable confidentiality designation in the filename and/or on a slip sheet placeholder produced with the Native document.

c. Designating Depositions.

With respect to any deposition, confidential treatment may be invoked on the record (before the deposition or proceeding is concluded) or within 30 calendar days following receipt of the official transcript by identifying the specific portions of the testimony as to which protection is sought. Regardless of when the protection is invoked, the Designating Party must identify by page and line number the portions of the deposition that include Protected Information within 30 days of receipt of the official

transcript. After the expiration of the 30-day period, the transcript shall be treated as Confidential or Highly Confidential only as to the specific portions that are actually designated.

d. Non-Written Materials.

Any non-text Protected Information (*e.g.*, videotape, audio tape, computer disk, etc.) may be designated as such by labeling the outside of such material as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or substantially similar designation. If a Receiving Party generates any “hard copy” transcription or printout from any such designated non-written materials, the person who generates such “hard copy” transcription or printout shall take reasonable steps to maintain the confidentiality of such materials and properly identify and stamp each page of such material as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or substantially similar designation consistent with the original designation by the Producing Party.

E. Adverse Event Protections

1. To protect against unauthorized disclosure of Protected Data, and to comply with all applicable State and federal laws and regulations, the Producing Party will redact the following items from produced documents: the names, street

addresses, Social Security numbers, tax identification numbers, and other personal identifying information of patients and individuals in clinical studies or adverse event reports (unless the above-referenced information relates to a named Plaintiff in this Action). Other general identifying information, such as patient or health provider numbers, health provider names, and adverse event reporter names, will be redacted as permitted by 21 C.F.R. § 20.63(f). Nothing in this paragraph shall require any Party to produce PHI or PII in a manner that does not comply with federal or State law. Further, nothing in this Order prevents either party from seeking the production of redacted information. Under 21 C.F.R. §§ 314.430(e) & (f) and 20.63.(f), the names and other information that would identify any patients who were reported as experiencing adverse events that are inadvertently disclosed shall be treated as Protected Data, regardless of whether the document containing such names is designated as Protected Data. If the Receiving Party identifies any such disclosure of names or other information that would identify any patients who were reported as experiencing adverse events, the Receiving Party shall treat the information as Protected Data and use its best efforts to notify the Producing Party, and return or destroy the document(s) at issue after identifying the inadvertent disclosure. The Producing Party will produce a redacted version promptly.

F. Disclosure of Protected Information

1. The failure to designate information as Protected Information does not constitute a waiver of such claim and may be remedied by prompt supplemental written notice upon discovery of the disclosure, with the effect that such information

will be subject to the protections of this Order. The Designating Party will then follow the procedures for a Belated Designation as provided for in Subsection J.

G. Materials Prepared Based on Protected Information

1. Any notes, lists, memoranda, indices, compilations, or other materials prepared or based on an examination of Protected Information, that quote from or paraphrase Protected Information with such specificity that the Protected Information can be identified shall be treated as Protected Information, and to the extent those materials are disclosed to other Parties or Non-Parties, or produced or filed in this matter, shall be designated as Confidential or Highly Confidential and shall be subject to all of the terms of this Order.

H. Notice to Non-Parties

1. Any Party issuing a subpoena to a Non-Party shall include a reference to this Order and the Non-Party may invoke any and all terms of this Protective Order with respect to any Protected Information provided to the Parties. In addition, such information produced may be designated as Protected Information by a Party, if any, to whom the Non-Party's obligation of confidentiality is owed, and the provisions of this Order shall apply to such discovery as if such discovery were being provided by a Party.

I. Good-faith Belief

1. For purposes of this Order, the Designating Party bears the burden of establishing the protectability of the Protected Information.

J. Belated Designation

1. If at any time before the first trial of this Action begins, a Designating Party realizes that previously produced Discovery Material should be designated as Protected Information, the Designating Party may so designate by advising all other Parties in writing and by producing replacement documents or material with a Protected Information designation as described above. The designated documents or material will thereafter be treated as Protected Information under this Order. Upon receipt of such designation in writing and re-production of the material with the applicable Protected Information legend, the Parties and other persons subject to this Order shall take reasonable and appropriate steps to notify any and all recipients of the Discovery Material about the protected status of the newly designated Protected Information and to retrieve the newly designated Protected Information from any person who is not permitted by this Order to have Protected Information. Defendants shall notify Plaintiffs' Co-Lead Counsel about the protected status of belated designations under this Section.

K. Persons Authorized to Receive Protected Information

1. Protected Information may be disclosed only to the following "Qualified Persons" under the following conditions:

Confidential Information

- a. The Court, including attorneys, employees, judges, magistrates, secretaries, special masters, stenographic reporters, staff, transcribers, and all other personnel necessary to assist the Court in its function, and the jury (and any appellate court or other

court (and their personnel) before which the Parties appear in this Action);

- b. Mediators or other individuals engaged or consulted in settlement of all or part of this Action. The Producing Party's Counsel shall have the right to exclude any person who is not authorized by this Order to receive documents or information designated as Confidential Information from any mediation or other dispute resolution process where use of Confidential Information is likely to arise;
- c. Court reporters, stenographers, and videographers retained to record testimony taken in this Action and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents or otherwise assisting in e-discovery, provided they execute Exhibit A of this Order;
- d. Counsel for the Parties (including in-house counsel), and such counsel's employees who have responsibility for the preparation and trial of the Action;
- e. Defendants and employees of a Defendant but only to the extent that the specifically named individual Defendant or employee's assistance or testimony is necessary to conduct the litigation in which the information is disclosed;

- f. Litigation support services, including outside copying services, court reporters, videographers, stenographers, or companies engaged in the business of supporting computerized or electronic litigation discovery or trial preparation, retained by a Party or its counsel, provided that they execute Exhibit A of this Order;
- g. Any individual expert, consultant, investigator, or expert consulting firm retained by counsel of record in connection with this Action to the extent necessary for the individual expert, consultant, investigator, or expert consulting firm to prepare a written opinion, to prepare to testify, or to assist counsel of record in the prosecution or defense of this Action, provided, however, that: (i) the disclosure shall be made only to an individual expert or Designated Expert Personnel, (ii) the individual expert or Designated Expert Personnel use the information solely in connection with this Action, and (iii) the individual expert and a representative of each expert consulting firm, if applicable, sign the written assurance attached as Exhibit A on behalf of the expert and any Designated Expert Personnel associated with that firm. At the conclusion of the litigation, counsel for the Receiving Party shall confirm in writing with counsel for the Designating Party that it will have any documents designated as Confidential Information that were provided to consultants or experts

returned to counsel for the Receiving Party or destroyed, so long as the Receiving Party certifies in writing the destruction has occurred;

- h. Any person (i) who created, authored, received, or reviewed such Confidential Information; (ii) is or was a custodian of the Confidential Information; (iii) is identified on such Confidential Information; or (iv) is or was an employee of the Producing Party and is reasonably believed to have knowledge of the matters in the Confidential Information;
- i. Any employees of a Defendant who are involved with the receipt, review, evaluation, and/or reporting of adverse event reports and other patient-related information to governmental and regulatory agencies to whom a Defendant is legally obligated to report such information, and the governmental and regulatory agencies to whom a Defendant reports such information;
- j. Witnesses (excluding individual plaintiffs except for their own protected information) at depositions, or who are noticed for depositions, including former employees to whom disclosure is in good faith reasonably necessary to conduct the Action (see procedure at L.2. for maintaining confidentiality with the witness);

- k. Professional jury or trial consultants, mock jurors, and other professional vendors engaged by the Parties or their counsel provided that they execute Exhibit A of this Order.
- l. Auditors and insurers of the Parties; and
- m. Any other person as may be designated by written agreement by the Producing Party or by order of this Court but only for purposes of this Action and for no other purpose.

Highly Confidential Information

- n. With respect to documents produced by one Defendant to another Defendant, material produced and designated as Highly Confidential may be disclosed only to outside counsel for the Defendants and to such other persons as counsel for the Designating Party agrees in advance or as Ordered by the Court, subject to the execution of an appropriate non-disclosure agreement akin to Exhibit A.
- o. As to documents produced by a Defendant to a Plaintiff, material produced and designated as Highly Confidential may be disclosed to all of the Qualified Persons listed in ¶ K.1 above regarding Confidential information with the exception of (1) in-house counsel for a non-designating Defendant; (2) employees of a non-designating Defendant unless the employee is a former employee of the Producing Party; and (3) auditors or insurers of a non-

designating Defendant. Nothing in this Order is intended to limit the Plaintiffs' freedom to use documents produced by a Defendant during depositions noticed in this Action except as otherwise provided or prohibited in this Order.

L. Executing the Non-Disclosure Agreement

1. Each person as identified in ¶¶ K.1.c. (court reporters); K.1.g (experts); K.1.j. (witnesses, subject to L.2); or K.1.f and k (other vendors) to whom Protected Information is disclosed shall execute a non-disclosure agreement in the form attached as Exhibit A before receiving Protected Information. Copies of the executed Exhibit A shall be retained by counsel disclosing Protected Information to such person. A non-disclosure agreement executed by a consultant shall not be available to any other Party except on a court order following a showing of exceptional circumstances.

2. As to witnesses at depositions or who are noticed for depositions to whom disclosure is in good faith reasonably necessary to conduct the Action: witnesses shall not retain a copy of documents containing Protected Information; witnesses noticed for depositions who are shown Protected Information in advance of their deposition must agree to be bound by the provisions of the Order by signing a copy of Exhibit A prior to being shown Protected Information; and witnesses at depositions must either sign a copy of Exhibit A or, if they refuse, receive an admonition that they will be subject to sanction, including contempt, for violating the terms of the Protective Order. A witness who refuses to sign Exhibit A shall not receive copies of the Protected Information and the Protected Information shall not

be attached to or included with any original or copy of the transcript of the deposition provided to the witness. A Plaintiff's current or former healthcare provider who has agreed on the record at deposition to maintain the confidentiality of any document intended to be used at the deposition may be shown or questioned about Protected Information at the deposition, provided that no copies of the Protected Information shall be left in the possession of the healthcare provider witness and copies of that Protected Information shall not be attached to or included with any original or copy of the transcript of that deposition provided to the healthcare provider. Counsel present at the deposition should make a good faith effort to obtain the healthcare provider's agreement on the record to maintaining confidentiality, and no counsel shall make efforts to dissuade the healthcare provider from refusing to agree on the record to maintaining the confidentiality of any such documents. Regardless of whether any deponent signs Exhibit A, this Order will apply to any deponent who is shown or examined about Protected Information, and the deponent cannot take any exhibits with them and shall be instructed not to reveal any information they learned from the Protected Information shown or told to them.

M. Challenging Protected Information Designations

1. A Party objecting in good faith to the designation of any material as Protected Information shall give written notice, including a statement supporting the good-faith basis for each objection to each document including the Bates numbers and any supporting authority, to the Designating Party after receiving such material. Upon receipt of the written objection, counsel for the Designating Party shall, within 14 calendar days, provide a written response to the objecting Party explaining the

good-faith basis for each designation to each document including the Bates number and any supporting authority. If the Designating Party does not respond within the 14-day period, the Receiving Party shall be relieved of its obligation to treat the challenged information as Confidential. If the Designating Party timely objects to the challenge, the Parties shall meet and confer in good faith within seven calendar days of the Designating Party's response, to attempt to resolve the dispute without resort to Court intervention.

2. If the objecting Party and the Designating Party cannot resolve their dispute through such meet and confer discussions, within 10 calendar days after the Parties have reached an impasse after meet and confer efforts, the Challenging Party shall submit the dispute to the Court for resolution per the procedures outlined in Local Rule 37.1. The Designating Party has the burden of establishing that the document is entitled to protection.

3. Any material so designated shall remain Protected and shall be subject to all restrictions on its disclosure and use set forth in this Order until one of the following occurs: (1) the Designating Party withdraws such designation in writing; or (2) the Court rules that the challenged material should be re-designated. In either event, the Designating Party shall reproduce copies of the re-designated material at the Designating Party's expense within 14 calendar days.

N. Subpoena for Protected Information

1. If any Party has obtained Protected Information under the terms of this Order and receives a request to produce such Protected Information by subpoena or other compulsory process commanding the production of such Protected Information,

such Party shall promptly notify the Designating Party, including in such notice the date set for the production of such subpoenaed information. The Designating Party shall respond to the Party receiving the subpoena within 21 calendar days of receiving written notice of any intent to seek a protective order or move to quash. During this time period, the Party or person receiving the subpoena shall inform the person seeking the protected discovery material that such information is subject to this Order. No production or other disclosure of such information per the subpoena or other process shall occur until the deadline for the Designating Party to respond to written notice of the subpoena.

2. If the Designating Party informs the Party served with the subpoena that it intends to file a motion seeking a protective order or motion to quash from the court where the subpoena or order issued, the Party served with the subpoena or court order shall not produce any information designated in this action as Protected Information before a determination by that court, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its Protected Information—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court. If the Designating Party does not move for a protective order or to quash within the designated response time in the subpoena, the Party served with the subpoena may comply with its terms.

O. Use of Discovery Material

1. Protected Information shall be used solely for purposes of prosecuting, defending, or attempting to resolve this Action, including any appeal.

2. Once Protected Information is admitted as evidence during a trial in this Action, the protection designation disappears thereafter unless the Court expressly rules to maintain that designation prospectively. If a party intends to present at trial Protected Information or information derived therefrom, such party shall provide advance notice to the other party at least five calendar days before the use at of trial by identifying the documents or information at issue as specifically as possible (*i.e.*, by Bates number, page range, deposition transcript lines, etc.) without divulging the actual Protected Information. Thereafter, the Designating Party will provide notice whether it has an objection and, if necessary, raise the issue with the Court. The Court may thereafter make such orders as are necessary to govern the use of such documents or information at trial.

P. Redactions

1. Any Producing Party may redact from documents: (a) any matter that the Producing Party claims is Privileged Information; (b) Personal Health Information (PHI) and Personal Identifying Information (PII), as described further in Paragraph E above; or (c) any Protected Data.

2. The Producing Party shall mark each redaction with a legend stating “REDACTED—PRIVILEGE” or “REDACTED—PROTECTED DATA” as appropriate, consistent with the privilege-logging provisions of the stipulated order regarding the disclosure of privileged information. Where a document consists of

more than one page, at least each page on which information has been redacted shall be so marked. If counsel for the Producing Party agrees or if the Court orders that documents initially redacted shall not be subject to redaction or shall receive alternative treatment, and the documents are subsequently produced in unredacted form, then the Producing Party may designate those unredacted documents as Confidential consistent with the terms of this Order.

3. Any Party may redact Protected Data that it claims, in good faith, requires protection under the terms of this Order. Protected Data, however, shall not be redacted from documents to the extent it directly relates to or identifies an individual named as a Party in connection with the subject matter of this Action. Protected Data of an individual named as a Party shall otherwise receive the same protections and treatment afforded to other Protected Data under this Protective Order.

4. Protected Data shall be redacted from any public filing not filed under seal.

5. A Party may not redact nonresponsive matter from otherwise responsive documents, unless otherwise agreed to by the Parties or permitted by the Court.

6. Challenging redactions

a. The right to challenge and process for challenging the designation of redactions shall be the same as the right to challenge and process for challenging the designation of Protected Information as set forth in Section M.

Q. Privileged Materials

1. Privileged materials shall be logged consistent with the provisions of Case Management Order No. 6 regarding the disclosure of privileged information.

R. Expert Materials

1. As to Plaintiffs and Defendants, a testifying expert's work product and communications between a Party's attorney and testifying expert, including drafts of any reports or disclosures, are protected from discovery except to the extent that the communication: (a) relates to compensation for the expert's study or testimony; (b) identifies facts or data that the Party's attorney provided and that the expert considered in forming the opinions to be expressed; or (c) identifies assumptions that the Party's attorney provided and that the expert relied on in forming the opinions to be expressed.

2. This paragraph does not relieve the expert from producing any data analyses, formulas, or other information relied upon, considered, or generated by the testifying expert in forming his or her opinions, in accordance with the Federal Rules of Civil Procedure.

3. Unless expressly set forth in paragraphs (1)–(2) above, communication between a lawyer and expert, in any form, related to preparation of the expert's report are deemed non-discoverable.

S. Exclusion of Individuals from Depositions

1. Counsel shall have the right to exclude any person who is not authorized by this Order to receive documents or information designated as Protected

Information from any deposition where testimony regarding or the use of Protected Information is likely to arise.

T. Security of Protected Information

1. Any persons in possession of another Party's Protected Information shall exercise the same care with regard to the storage, custody, or use of Protected Information as they would apply to their own material of the same or comparable sensitivity. A Receiving Party must take reasonable precautions to protect Protected Information from loss, misuse, and unauthorized access, disclosure, alteration, and destruction.

2. Protected Information in electronic format shall be maintained in a secure litigation support site(s) that applies standard industry practices regarding data security, including but not limited to application of access control rights to those persons entitled to access Protected Information under this Order.

3. Any Protected Information downloaded from the litigation support site(s) in electronic format shall be stored only on device(s) (*e.g.*, laptop, tablet, smartphone, thumb drive, or portable hard drive) that are password protected and/or encrypted with access limited to persons entitled to access Protected Information under this Order.

4. Protected Information in paper format is to be maintained in a secure location with access limited to persons entitled to access Protected Information under this Order.

5. Summaries of Protected Information, including any lists, memoranda, indices, or compilations prepared or based on an examination of Protected

Information, that quote from or paraphrase Protected Information in a manner that enables it to be identified shall be accorded the same status of confidentiality as the underlying Protected Information.

6. If the Receiving Party discovers a breach of security relating to the Protected Information of a Producing Party, the Receiving Party shall: (a) provide written notice to the Producing Party of the breach within 48 hours of the Receiving Party's discovery of the breach; (b) investigate the effects of the breach, undertake reasonable, industry-standard actions to remediate the effects of the breach, and provide the Producing Party with assurance reasonably satisfactory to the Receiving Party that the breach shall not recur; and (c) provide sufficient information about the breach that the Producing Party can ascertain the size and scope of the breach. The Receiving Party agrees to cooperate with the Producing Party or law enforcement in investigating any such security incident.

Breach is defined to include, but is not limited to, the confirmed or suspected: (d) disclosure or use of Confidential Information by or to an unauthorized person; and/or (e) the loss, theft or hacking of a device containing Confidential Information.

U. Filing Protected Information

1. All Protected Information included as part of any pleading or memorandum shall be filed in accordance with Local Rule 5.2 and ¶ 7 of the Court's Civil Standing Order. Before filing a document with redactions, the Party must seek leave to do so, explaining the basis for each redaction requested, certifying that the Party has conferred with the Producing Party and the Producing Party's position (if the Party seeking to file under seal did not produce the document), and

simultaneously providing unredacted versions of the document at issue with the proposed redactions highlighted or otherwise marked to the Court for review by email to chambers ([Calabrese Chambers@ohnd.uscourts.gov](mailto:Calabrese_Chambers@ohnd.uscourts.gov)). A meet and confer to confirm the opposing party does not oppose the request to seal must occur sufficiently in advance of filing a motion for leave. A motion for leave must be filed sufficiently in advance of the deadline for filing the document the Party seeks to file under seal, typically at least seven days. Once the Court determines that making redactions is appropriate, the Party must (a) file a redacted version of the document at issue; (b) serve counsel with an unredacted version by email; and (c) file an unredacted version under seal. Only in rare circumstances will the Court permit filing an entire document under seal. The Court expects the Parties to justify any request for redactions or sealing a document in its entirety under *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016), and its progeny.

V. Improper Disclosure of Confidential Information

1. Disclosure of Protected Information other than in accordance with the terms of this Order may subject a Party to such sanctions and remedies as the Court may deem appropriate under Rule 16(f)(2), Rule 37(b)(2)(A), or the Court's contempt powers.

W. Final Termination

1. Within 45 calendar days of the termination of the Action, including, for example, a voluntary dismissal or an exhaustion of any and all appeals, counsel for each Party shall, upon request of the Producing Party, return all Protected Information, including any copies, excerpts, and summaries thereof including those

sent to other third parties as permitted by this Order, or shall destroy the same at the option of the Receiving Party and provide written confirmation of destruction, and shall purge all such information from all machine readable media on which the Protected Information resides. Notwithstanding the foregoing, counsel for each Party may, consistent with their statutory and/or ethical obligations, retain all pleadings, briefs, memoranda, exhibits to any pleading, discovery responses, deposition transcripts, deposition exhibits, expert reports, motions, trial exhibits, and other documents filed with the Court that refer to or incorporate Protected Information, and will continue to be bound by this Order with respect to all such retained information. Further, attorney-work-product materials that contain Protected Information need not be destroyed, but, if they are not destroyed, the person in possession of the attorney work-product will continue to be bound by this Order with respect to all such retained information.

X. Order Remains in Force

1. This Order shall remain in force and effect until modified, superseded, or terminated by consent of the Parties or by order of the Court. Unless otherwise ordered or agreed upon by the Parties, this Order shall survive the termination of this Action. The Court retains jurisdiction after termination of this Action to enforce this Order and to make such amendments, modifications, deletions, and additions to this Order as the Court may deem appropriate.

Y. Modifying This Order

1. Nothing in this Order shall be construed to prohibit the Parties from agreeing to modify any provision of this Order or seeking relief from the Court. Nor

shall anything in this Order or any Party's compliance with it be construed as a waiver of any Party's rights under applicable law.

Z. A Party's Use of Its Own Documents

1. Nothing contained in this Order shall prevent a Party to this Action from using its own Protected Information in any way, or from revealing its own Protected Information to whomever it chooses, without prior consent of any person or of the Court.

SO ORDERED.

Dated: May 21, 2024



J. Philip Calabrese
United States District Judge
Northern District of Ohio