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UNITED STATES DISTRICT COURT

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IN AND FOR THE DISTRICT OF ARIZONA

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Regional Care Services Corporation, an
Arizona Corporation; Regional Care
Services Corporation Health and Welfare
Employee Benefit Plan,

Case No. CV-10-02597-PHX-LOA

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Plaintiffs,

STIPULATED PROTECTIVE ORDER

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v.

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Companion Life Insurance Company,

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Defendant.

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According to the parties' Stipulation for Protective Order, discovery in this action may involve the production or disclosure of confidential medical or other sensitive personal information and/or documentation. (Doc. 20) The Court has considered Ninth Circuit authority in light of the parties' Stipulation which the Court construes as a joint motion for protective order. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003); *Phillips v. Gen. Motors*, 307 F.3d 1206, 1213 (9th Cir. 2002) (the presumption of public access rebutted because "[w]hen a court grants a protective order for information produced during discovery, it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality."); *Torres v. Goddard*, 2009 WL 981077 (D.Ariz. 2009).

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After considering all relevant factors, including "the public interest in understanding the judicial process and whether disclosure of the [confidential] material could result in improper use of the material for" inappropriate or illegal purposes, *Hagestad v. Tragesser*,

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1 49 F .3d 1430, 1434 (9th Cir. 1995); Rule 26(c), Federal Rules of Civil Procedure, and good
2 cause appearing,

3 **IT IS ORDERED** that the parties' stipulation for protective order, doc. 20 is
4 **GRANTED.**

5 **IT IS FURTHER ORDERED** as follows:

6 I. The following definitions shall apply to this Order:

7 A. "Material" shall mean all documents, records, tangible materials,
8 testimony, responses to discovery, and other information, produced, served, disclosed, or
9 filed in this action, including, without limitation, all copies, excerpts, and summaries.

10 B. "Confidential Information" shall mean: 1) any and all medical information
11 concerning any individual party or non-party; 2) the social security or other tax
12 identification numbers of any individual party or non-party; and 3) any documents, records
13 or information of a non-party that was obtained by a party based upon a written
14 confidentiality agreement or a protective order entered by a court of competent jurisdiction.

15 C. "Designator" shall mean any Party designating Material as containing
16 Confidential Information.

17 D. "Counsel" shall mean counsel who have entered an appearance for the
18 Parties, members of their firms, associate attorneys, and paralegal, clerical, and other
19 regular employees of such counsel.

20 E. "Approved Third Parties" shall mean copy services retained by Parties'
21 counsel for the preparation of this action, certified court reporters, videographers
22 transcribing or filming depositions or testimony involving such Confidential Information,
23 and non-party witnesses who may be examined and may testify concerning Confidential
24 Information.

25 F. "Independent Advisors" shall mean consultants and other experts retained
26 by counsel and/or any Party to assist in this action.

27 II. Confidential Information shall be subject to the following restrictions:
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1 A. Confidential Information shall not be given, disclosed, summarized,
2 described, characterized or otherwise communicated or made available to anyone except
3 those specified in subparagraph II(B) of this Order.

4 B. Except as provided by subparagraph II(C), Confidential Information may
5 be disclosed, in accordance with paragraph III of this Order, only to:

- 6 1. Counsel;
- 7 2. The Parties;
- 8 3. The Court, court personnel, court reporters, and jurors;
- 9 4. Independent Advisors;
- 10 5. Approved Third Parties;
- 11 6. Witnesses called to give testimony; and
- 12 7. Any other person upon order of the Court or to whom the

Designator and Parties agree in writing.

13 C. Pursuant to Local Civil Rule 26(c), Confidential Information used as
14 exhibits to or incorporated in any other manner in briefs, memoranda, deposition transcripts
15 or other documents filed with the Court shall be protected as follows: To the extent that any
16 brief, memorandum, deposition transcript or other document submitted to the Court
17 incorporates or refers to the substance of any information contained in any designated
18 Confidential Information, the party filing such brief, memorandum, deposition transcript or
19 other document or portion thereof shall file a motion or stipulation to seal pursuant to Local
20 Civil Rule 5(g).

21 III. Approval for access to Confidential Information:

22 A. Each person to be given access to Confidential Information pursuant to this
23 Order (except those identified in subparagraphs II(B)(1) and (3) of this Order) shall be
24 provided with a copy of this Order and shall be told that: (1) the Confidential Information is
25 being disclosed pursuant to and subject to the terms of this Order and may not be disclosed
26 or used other than pursuant to the terms of this Order; and (2) the violation of the terms of
27 the Order may subject the person to punishment for contempt of a Court order.
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1 B. Except as provided in subparagraph C, below, any person given access to
2 Confidential Information (except those identified in subparagraphs II(B)(1), (2) and (3) of
3 this Order) must first read this Order, and acknowledge in writing that he or she is bound by
4 this Order and subject to the jurisdiction of this Court for enforcement of this Order by
5 signing **Exhibit A**.

6 C. If Confidential Information is to be disclosed to a witness, the party
7 seeking to protect the material may seek to obtain the witness' acknowledgement that he or
8 she is bound by and subject to the terms of this Order and the Court's jurisdiction for
9 purposes of enforcement of this Order, and the witness' consent may be made on the record
10 and under oath, rather than in writing, and any objection may also be made orally. If the
11 witness does not consent, the Confidential Information shall not be disclosed pending
12 resolution of any objections.

13 D. Any Independent Advisor or non-party witness or employee, in addition to
14 certifying that he or she has read this Order and manifests his or her assent to be bound
15 thereby by signing **Exhibit A**, shall return all Confidential Information to the Party that
16 retained him or her following the termination of his or her services.

17 E. Each individual who receives any Confidential Information shall maintain
18 such information in a secure and safe area and in a manner which ensures that access to
19 Confidential Information is strictly limited to persons entitled to receive Confidential
20 Information in accordance with this Order's provisions.

21 IV. Confidential Information shall be designated as follows:

22 A. In the case of documents or other tangible Materials, such as
23 videotapes or computer diskettes, the documents and Materials are to be unobtrusively
24 marked by the Designator as "CONFIDENTIAL" with or without the words "SUBJECT TO
25 PROTECTIVE ORDER," on each page or item containing Confidential Information.

26 B. All documents made available for inspection shall be treated as
27 Confidential Information until copies are produced. Once specific documents have been
28 selected for copying, any document containing Confidential Information may be marked
before delivery to the Party who inspected and selected the documents.

1 C. A Party shall not waive the right to designate documents as
2 Confidential Information by reason of making the documents available for inspection
3 before they are copied and marked pursuant to this procedure.

4 D. In the case of written discovery responses, designation may be made by
5 placing the words "CONFIDENTIAL INFORMATION," with or without the words
6 "SUBJECT TO PROTECTIVE ORDER," on each page of any such response, or by serving
7 responses containing such information in a separate document where the entirety of such
8 response is to be designated.

9 E. In the case of depositions or other testimony, designation of the portion
10 of the testimony (including exhibits) that contains Confidential Information shall be made
11 by a statement on the record before the end of each day in which the testimony is concluded,
12 or by a written statement sent to all counsel within 15 business days after receipt of the
13 transcript of such testimony.

14 F. If the designation is made during a deposition, only persons to whom
15 disclosure of Confidential Information is permitted under paragraph II of this Order shall
16 remain present while Confidential Information is being used or discussed, and the court
17 reporter shall bind the transcript in separate portions containing the non-confidential
18 material and Confidential Information. If, during the course of a deposition, the response to
19 a question would require the disclosure of Confidential Information and unauthorized
20 persons are present, the witness may refuse to answer for the Party whose Confidential
21 Information would be disclosed. Counsel may instruct the witness not to answer or not to
22 complete his answer, as the case may be, until any persons not authorized to receive
23 Confidential Information have left the room.

24 G. The court reporter shall place the words "CONFIDENTIAL
25 INFORMATION" on the cover of the relevant portions of the transcript.

26 H. Any court reporter or videographer who transcribes or videotapes
27 testimony at a deposition shall be required to agree, before transcribing or videotaping any
28 such testimony, that all information designated Confidential Information shall not be
disclosed except as provided in this Order, and that copies of any transcript, reporter's notes,

1 videotapes, or any other transcription records of any such testimony will be retained in
2 absolute confidence and safekeeping by such reporter or videographer or shall be delivered
3 to any attorney of record or filed under seal in this District Court. The Party who notices a
4 deposition shall be responsible for notifying any court reporter or videographer of these
5 obligations.

6 V. The Parties may challenge the designation of Confidential Information under
7 certain circumstances:

8 A. No Party concedes that any material designated by any other person as
9 Confidential Information contains trade secrets or non-public, commercial, financial, or
10 business information, or has been properly designated as Confidential Information. A Party's
11 failure to challenge a designation of "Confidential Information" may not be deemed an
12 admission or concession that the designation is proper.

13 B. A Party may challenge a Designator's designation of "Confidential
14 Information" at any time by making application to the Court that the Confidential
15 Information not be treated as such. In any such application to the Court, the burden of
16 justifying any designation shall be on the Designator. Before seeking any relief from the
17 Court under this paragraph, the objecting Party and Designator shall make a good faith effort
18 to resolve any dispute concerning the confidential treatment of any document. A Party shall
19 not be obligated to challenge the propriety of a "Confidential Information" designation at the
20 time made, and a failure to do so does not preclude a subsequent challenge thereto. In the
21 event a motion is filed pursuant to this paragraph, the Confidential Information in question
22 shall remain subject to this Order, until the Court rules on the motion.

23 C. Any Designator may, at any time, withdraw the designation of
24 "Confidential Information" for any or all of what it has designated as such.

25 D. This Order may be altered or modified only by agreement of counsel
26 for all Parties in writing, including on a transcript or by the Court.

27 VI. If any information that a Party claims in good faith is "Confidential
28 Information" is inadvertently disclosed to a receiving Party without being properly
designated as Confidential Information, the Designator may notify each receiving Party in

1 writing as soon as reasonably possible after becoming aware that the Confidential
2 Information was not properly designated. The notification shall identify with specificity the
3 material to be designated Confidential Information. Upon receipt of written notice as
4 provided by this Order, the receiving Party shall mark the original and all known copies of
5 the material with the property designation and treat the information as "Confidential
6 Information" under this Order. To the extent that protected information may have been
7 disclosed to a person other than an authorized person, the Party shall inform the Designator
8 and make every reasonable effort to retrieve the information and avoid any further
9 disclosure to non-authorized persons.

10 VII. Within ninety (90) days following the conclusion of this action, including the
11 exhaustion of post-judgment motions, any appeals, or the expiration of time for taking such
12 appeals, all material designated as, or reflecting, Confidential Information and all copies of
13 them (other than material filed with the Court), shall be returned by counsel for the
14 receiving Party to counsel for the Designator or alternatively be destroyed with a certificate
15 provided from the attorney of record certifying destruction.

16 VIII. This Order shall survive and continue to be binding after the conclusion of
17 this action. The Court shall retain jurisdiction to enforce this Order through a period of
18 thirty days following the return or destruction of material as described in paragraph VII.

19 IX. Each Party and person bound by this Order may move for modification of this
20 Order for good cause on notice in writing to the Parties.

21 X. Neither this Order nor any designation made pursuant to this Order shall in any
22 way restrict the right of any third-party to seek production in any other action or forum of
23 Materials designated as Confidential Information in this action. If Confidential Information
24 is produced pursuant to such request, however, the producing Party will immediately notify
25 the other Party.

26 XI. Nothing in this Order shall affect in any way the admissibility of any
27 document, tangible thing, testimony, or other evidence at trial, nor shall it prejudice in any
28 way the rights of any Party to object to the authenticity or admissibility into evidence of any
document, testimony or evidence subject to this Order. Nothing in this Order shall prejudice

1 in any way the rights of any Party to object to the production of documents or information it
2 considers not subject to discovery.

3 XII. Notwithstanding any other provision of this Order to the contrary, the
4 confidentiality obligations of this Order shall not apply, or shall cease to apply, to any
5 information that:

6 A. At the time of disclosure hereunder, was already lawfully in the
7 possession of the receiving Party and was not acquired under any obligation of
8 confidentiality; or

9 B. At the time of disclosure hereunder was, or subsequently becomes,
10 through no fault of the receiving Party, a public document or publicly available.

11 XIII. This Order shall not preclude any Party from seeking and obtaining, on an
12 appropriate showing, such additional protection with respect to Confidential Information as
13 that Party may consider appropriate.

14 XIV. In stipulating to this Order, no Party has waived any applicable privilege or
15 work-product protection, and this Order shall not affect the ability of a Party to seek relief
16 from inadvertent disclosure of material protected by privilege or work product protection.

17 XV. No Party to this action, by entering into this Order, by designating certain
18 material as Confidential Information under this Order, or by acquiescing in any other Party's
19 or third-party's such designation, admits anything relative to the confidential status and/or
20 trade secret status of such information.

21 XVI. The parties, by and through counsel, have agreed to be bound by the terms of
22 this Order and have stipulated that the Court may enter this Order in the form presented.

23 On the Court's own motion,

24 **IT IS FURTHER ORDERED** that, except as otherwise ordered by the Court, any
25 documents used as an exhibit at trial or during any public hearing in the course of this action
26 shall no longer be deemed to be Confidential Information pursuant to this Order. The Court
27 retains the authority, *sua sponte* or for good cause shown, to modify the provisions of this
28 Order or to determine that any documents or information designated as Confidential
Information shall no longer be protected by the provisions of this Order.

EXHIBIT A

WRITTEN ACKNOWLEDGMENT

Dear Counsel:

1. I certify, under penalty of perjury, that I have read the Protective Order in *Regional Care Services Corporation and Regional Care Services Corporation Health and Welfare Employee Benefit Plan v. Companion Life Insurance Company*, Case No. 2:10-cv-02597-LOA, in the United States District Court in and for the District of Arizona; and I understand that I am subject to the jurisdiction of this Court for enforcement of the Protective Order.

2. I hereby manifest my assent to be bound by the Protective Order by signing this Exhibit A. I shall maintain such information in a secure and safe area and in a manner which ensures that access to Confidential Information is strictly limited to persons entitled to receive Confidential Information in accordance with the provisions of the Protective Order, and shall, within thirty days, return all Confidential Information, as defined in the Protective Order, to the Party that provided the Confidential Information to me upon request by that Party.

3. I hereby acknowledge that: (1) the Confidential Information is being disclosed pursuant to and subject to the terms of the Protective Order and may not be disclosed or used other than pursuant to the terms of the Protective Order; and (2) the violation of the terms of the Protective Order may subject me to punishment for contempt of a Court order.

4. I have not and will not divulge, or undertake to divulge, to any person or recording device, any Confidential Information shown or told to me except as authorized in the Protective Order. I will not use the Confidential Information for any purpose other than this litigation.

(Signature)

(Print or Type Name)

Address:

Telephone No.: (_____) _____

Date: _____