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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

ALEXIS ROCHA, a married woman,
Plaintiff,
v.
ASURION, LLC, a foreign limited
liability company,
Defendant.

Case No. 2:24-cv-0017-TOR

**STIPULATED PROTECTIVE
ORDER AND ER 502(D) AND (E)
CLAWBACK AGREEMENT**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

1 applicable legal principles, and it does not presumptively entitle parties to file
2 confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible things
5 produced or otherwise exchanged: Plaintiff’s medical records, including
6 submissions supporting her request for medical/parental leave by health care
7 personnel.

8 3. SCOPE

9 The protections conferred by this agreement cover not only confidential material (as
10 defined above), but also (1) any information copied or extracted from confidential
11 material; (2) all copies, excerpts, summaries, or compilations of confidential
12 material; and (3) any testimony, conversations, or presentations by parties or their
13 counsel that might reveal confidential material.

14 However, the protections conferred by this agreement do not cover information that
15 is in the public domain or becomes part of the public domain through trial or
16 otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use confidential material that
19 is disclosed or produced by another party or by a non-party in connection with this

1 case only for prosecuting, defending, or attempting to settle this litigation.
2 Confidential material may be disclosed only to the categories of persons and under
3 the conditions described in this agreement. Confidential material must be stored and
4 maintained by a receiving party at a location and in a secure manner that ensures that
5 access is limited to the persons authorized under this agreement.

6 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the designating party, a
8 receiving party may disclose any confidential material only to:

9 (a) the receiving party’s counsel of record in this action, as well as
10 employees of counsel to whom it is reasonably necessary to disclose the
11 information for this litigation;

12 (b) the parties to the litigation, including the officers, directors, and
13 employees (including in house counsel) of the receiving party to whom
14 disclosure is reasonably necessary for this litigation, unless the parties agree
15 that a particular document or material produced is for Attorney’s Eyes Only
16 and is so designated;

17 (c) experts and consultants to whom disclosure is reasonably
18 necessary for this litigation and who have signed the “Acknowledgment and
19 Agreement to Be Bound” (Exhibit A);

1 (d) the court, court personnel, and court reporters and their staff;

2 (e) copy or imaging services retained by counsel to assist in the
3 duplication of confidential material, provided that counsel for the party
4 retaining the copy or imaging service instructs the service not to disclose any
5 confidential material to third parties and to immediately return all originals
6 and copies of any confidential material;

7 (f) during their depositions, witnesses in the action to whom
8 disclosure is reasonably necessary and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
10 otherwise agreed by the designating party or ordered by the court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal
12 confidential material must be separately bound by the court reporter and may
13 not be disclosed to anyone except as permitted under this agreement;

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

17 4.3 Filing Confidential Material. Before filing confidential material or
18 discussing or referencing such material in court filings, the filing party shall confer
19 with the designating party, to determine whether the designating party will remove

1 the confidential designation, whether the document can be redacted, or whether a
2 motion to seal or stipulation and proposed order is warranted. During the meet and
3 confer process, the designating party must identify the basis for sealing the specific
4 confidential information at issue, and the filing party shall include this basis in its
5 motion to seal, along with any objection to sealing the information at issue. Local
6 Civil Rule 5(g) sets forth the procedures that must be followed and the standards that
7 will be applied when a party seeks permission from the court to file material under
8 seal. A party who seeks to maintain the confidentiality of its information must satisfy
9 the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
10 motion to seal. Failure to satisfy this requirement will result in the motion to seal
11 being denied, in accordance with the strong presumption of public access to the
12 Court's files.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

15 Each party or non-party that designates information or items for protection under
16 this agreement must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. The designating party must designate for
18 protection only those parts of material, documents, items, or oral or written
19 communications that qualify, so that other portions of the material, documents,

1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this agreement.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise
13 stipulated or ordered, disclosure or discovery material that qualifies for protection
14 under this agreement must be clearly so designated before or when the material is
15 disclosed or produced.

16 (a) Information in documentary form: (e.g., paper or electronic
17 documents and deposition exhibits, but excluding transcripts of depositions or
18 other pretrial or trial proceedings), the designating party must affix the word
19 "CONFIDENTIAL" to each page that contains confidential material. If only

1 a portion or portions of the material on a page qualifies for protection, the
2 producing party also must clearly identify the protected portion(s) (e.g., by
3 making appropriate markings in the margins).

4 (b) Testimony given in deposition or in other pretrial proceedings:
5 the parties and any participating non-parties must identify on the record,
6 during the deposition or other pretrial proceeding, all protected testimony,
7 without prejudice to their right to so designate other testimony after reviewing
8 the transcript. Any party or non-party may, within fifteen days after receiving
9 the transcript of the deposition or other pretrial proceeding, designate portions
10 of the transcript, or exhibits thereto, as confidential. If a party or non-party
11 desires to protect confidential information at trial, the issue should be
12 addressed during the pre-trial conference.

13 (c) Other tangible items: the producing party must affix in a
14 prominent place on the exterior of the container or containers in which the
15 information or item is stored the word “CONFIDENTIAL.” If only a portion
16 or portions of the information or item warrant protection, the producing party,
17 to the extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive

1 the designating party's right to secure protection under this agreement for such
2 material. Upon timely correction of a designation, the receiving party must make
3 reasonable efforts to ensure that the material is treated in accordance with the
4 provisions of this agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a
7 designation of confidentiality at any time. Unless a prompt challenge to a
8 designating party's confidentiality designation is necessary to avoid foreseeable,
9 substantial unfairness, unnecessary economic burdens, or a significant disruption or
10 delay of the litigation, a party does not waive its right to challenge a confidentiality
11 designation by electing not to mount a challenge promptly after the original
12 designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any
14 dispute regarding confidential designations without court involvement. Any motion
15 regarding confidential designations or for a protective order must include a
16 certification, in the motion or in a declaration or affidavit, that the movant has
17 engaged in a good faith meet and confer conference with other affected parties in an
18 effort to resolve the dispute without court action. The certification must list the date,
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1 manner, and participants to the conference. A good faith effort to confer requires a
2 face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
4 court intervention, the designating party may file and serve a motion to retain
5 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
6 5(g), if applicable). The burden of persuasion in any such motion shall be on the
7 designating party. Frivolous challenges, and those made for an improper purpose
8 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
9 expose the challenging party to sanctions. All parties shall continue to maintain the
10 material in question as confidential until the court rules on the challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
12 IN OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any information or items designated in this action as
15 “CONFIDENTIAL,” that party must:

16 (a) promptly notify the designating party in writing and include a copy of
17 the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order
19 to issue in the other litigation that some or all of the material covered by the subpoena

1 or order is subject to this agreement. Such notification shall include a copy of this
2 agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the designating party whose confidential material may be affected.

5 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
7 confidential material to any person or in any circumstance not authorized under this
8 agreement, the receiving party must immediately (a) notify in writing the designating
9 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
10 unauthorized copies of the protected material, (c) inform the person or persons to
11 whom unauthorized disclosures were made of all the terms of this agreement, and
12 (d) request that such person or persons execute the “Acknowledgment and
13 Agreement to Be Bound” that is attached hereto as Exhibit A.

14 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
15 PROTECTED MATERIAL

16 When a producing party gives notice to receiving parties that certain
17 inadvertently produced material is subject to a claim of privilege or other protection,
18 the obligations of the receiving parties are those set forth in Federal Rule of Civil
19 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order or agreement that provides for production
2 without prior privilege review. The parties agree to the entry of a non-waiver order
3 under Fed. R. Evid. 502(d) as set forth herein. The parties agree to protection of
4 privileged and otherwise protected documents against claims of waiver (including
5 as against third parties and in other federal and state proceedings) as follows:

6 (a) The disclosure or production of documents by a producing party
7 subject to a legally recognized claim of privilege, including without limitation the
8 attorney-client privilege and the work-product doctrine, to a receiving party, shall in
9 no way constitute the voluntary disclosure of such document.

10 (b) The inadvertent disclosure or production of any document in this
11 action shall not result in the waiver of any privilege, evidentiary protection, or other
12 protection associated with such document as to the receiving party or any third
13 parties, and shall not result in any waiver, including subject matter waiver, of any
14 kind.

15 (c) If, during the course of this litigation, a party determines that any
16 document produced by another party is or may reasonably be subject to a legally
17 recognizable privilege or evidentiary protection (“Protected Document”):

18 (i) the receiving party shall: (A) refrain from reading the
19 Protected Document any more closely than is necessary to ascertain that it is

1 privileged or otherwise protected from disclosure; (B) immediately notify the
2 producing party in writing that it has discovered documents believed to be privileged
3 or protected; (C) specifically identify the Protected Documents by Bates number
4 range or hash value; and, (D) within ten days of discovery by the receiving party,
5 return, sequester, or destroy all copies of such Protected Documents, along with any
6 notes, abstracts, or compilations of the content thereof. To the extent that a Protected
7 Document has been loaded into a litigation review database under the control of the
8 receiving party, the receiving party shall have all electronic copies of the Protected
9 Document extracted from the database. Where such Protected Documents cannot
10 be destroyed or separated, they shall not be reviewed, disclosed, or otherwise used
11 by the receiving party. Notwithstanding, the receiving party is under no obligation
12 to search or review the producing party's documents to identify potentially
13 privileged or work product Protected Documents.

14 (ii) If the producing party intends to assert a claim of privilege
15 or other protection over documents identified by the receiving party as Protected
16 Documents, the producing party will, within ten days of receiving the receiving
17 party's written notification described above, inform the receiving party of such
18 intention in writing and shall provide the receiving party with a log for such
19 Protected Documents that is consistent with the requirements of the Civil Rules,

1 setting forth the basis for the claim of privilege or other protection. In the event that
2 any portion of a Protected Document does not contain privileged or protected
3 information, the producing party shall also provide to the receiving party a redacted
4 copy of the document that omits the information that the producing party believes is
5 subject to a claim of privilege or other protection.

6 (d) If, during the course of this litigation, a party determines it has
7 produced a Protected Document:

8 (i) the producing party may notify the receiving party of such
9 inadvertent production in writing, and demand the return of such documents. Such
10 notice shall be in writing; however, it may be delivered orally on the record at a
11 deposition, promptly followed up in writing. The producing party's written notice
12 will identify the Protected Document inadvertently produced by Bates number range
13 or hash value, the privilege or protection claimed, and the basis for the assertion of
14 the privilege and shall provide the receiving party with a log for such Protected
15 Documents that is consistent with the requirements of the Civil Rules, setting forth
16 the basis for the claim of privilege or other protection. In the event that any portion
17 of the Protected Document does not contain privileged or protected information, the
18 producing party shall also provide to the receiving party a redacted copy of the
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1 document that omits the information that the producing party believes is subject to
2 a claim of privilege or other protection.

3 (ii) The receiving party must, within ten days of receiving the
4 producing party's written notification described above, return, sequester, or destroy
5 the Protected Document and any copies, along with any notes, abstracts, or
6 compilations of the content thereof. To the extent that a Protected Document has
7 been loaded into a litigation review database under the control of the receiving party,
8 the receiving party shall have all electronic copies of the Protected Document
9 extracted from the database.

10 (e) To the extent that the information contained in a Protected
11 Document has already been used in or described in other documents generated or
12 maintained by the receiving party prior to the date of receipt of written notice by the
13 producing party as set forth in paragraphs (c)(ii) and d(i), then the receiving party
14 shall sequester such documents until the claim has been resolved. If the receiving
15 party disclosed the Protected Document before being notified of its inadvertent
16 production, it must take reasonable steps to retrieve it.

17 (f) The receiving party's return, sequestering, or destruction of
18 Protected Documents as provided herein will not act as a waiver of the requesting
19 party's right to move for the production of the returned, sequestered, or destroyed

1 documents on the grounds that the documents are not, in fact, subject to a viable
2 claim of privilege or protection. However, the receiving party is prohibited and
3 estopped from arguing that:

4 (i) the disclosure or production of the Protected Documents
5 acts as a waiver of an applicable privilege or evidentiary protection;

6 (ii) the disclosure of the Protected Documents was not
7 inadvertent;

8 (iii) the producing party did not take reasonable steps to
9 prevent the disclosure of the Protected Documents; or

10 (iv) the producing party failed to take reasonable or timely
11 steps to rectify the error.

12 (g) Either party may submit Protected Documents to the Court under
13 seal for a determination of the claim of privilege or other protection. The producing
14 party shall preserve the Protected Documents until such claim is resolved. The
15 receiving party may not use the Protected Documents for any purpose absent this
16 Court's order.

17 (h) Upon a determination by the Court that the Protected Documents
18 are protected by the applicable privilege or evidentiary protection, and if the
19 Protected Documents have been sequestered rather than returned or destroyed by the

1 receiving party, and subject to the exceptions outlined in Paragraph 10 below, the
2 Protected Documents shall be returned or destroyed within 10 days of the Court's
3 order. The Court may also order the identification by the receiving party of
4 Protected Documents by search terms or other means.

5 (i) Nothing contained herein is intended to, or shall serve to limit a
6 party's right to conduct a review of documents, data (including electronically stored
7 information), and other information, including without limitation, metadata, for
8 relevance, responsiveness, and/or the segregation of privileged and/or protected
9 information before such information is produced to another party.

10 (j) By operation of the parties' agreement, the parties are
11 specifically afforded the protections of Evid. R. 502(e).

12 10. NON TERMINATION AND RETURN OF DOCUMENTS

13 (a) Within 60 days after the termination of this action, including all
14 appeals, each receiving party must return all confidential material to the producing
15 party, including all copies, extracts and summaries thereof. Alternatively, the parties
16 may agree upon appropriate methods of destruction.

17 (b) If Confidential material or Protected Documents have been loaded into
18 any litigation review database, the attorney for the party using such database shall
19 have the responsibility of ensuring that all such Confidential material or Protected

1 Documents, including all associated images and native files, are extracted from such
2 databases (including any associated staging databases) and destroyed. “Destroyed”
3 shall mean deletion of documents from all databases, applications, and/or file
4 systems in a manner such that they are not readily accessible without the use of
5 specialized tools or techniques typically used by a forensic expert.

6 (c) Notwithstanding the preceding paragraph, counsel are entitled to retain
7 one archival copy of all documents filed with the Court, trial, deposition, and hearing
8 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
9 work product, discovery requests and responses, and consultant and expert work
10 product, even if such materials contain confidential material. Such copies shall
11 remain subject to the terms of this Protective Order.

12 (d) The parties, counsel of record for the parties, and experts or consultants
13 for a party shall not be required to return or to destroy any Confidential material or
14 Protected Documents to the extent such information is (i) stored on media that is
15 generally considered not reasonably accessible, such as disaster recovery backup
16 tapes, or (ii) only retrievable through the use of specialized tools or techniques
17 typically used by a forensic expert; provided that to the extent any Confidential
18 material or Protected Documents are not returned or destroyed due to the foregoing
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1 reasons, such Confidential material or Protected Documents shall remain subject to
2 the confidentiality obligations of this Protective Order.

3 The confidentiality obligations imposed by this agreement shall remain in
4 effect until a designating party agrees otherwise in writing or a court orders
5 otherwise.

6 11. COMPUTATION OF TIME

7 The computation of any period of time prescribed or allowed by this Order
8 shall be governed by the provisions for computing time set forth in Civil Rule 6.

9 12. EFFECT OF STIPULATION

10 Once all parties have agreed to this Stipulation, they shall treat it as binding.
11 However, notwithstanding the parties agreement to this Stipulation, pursuant to 45
12 C.F.R. § 164.512(e)(1)(v), the parties are under no obligation to produce protected
13 health information under HIPAA until the Court approves and enters this Order.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 DATED: June 26, 2024 /s/ Michelle K. Fossum
16 Michelle K. Fossum, WSBA #20249
17 michelle@sayrelaw.com
18 SAYRE SAYRE & FOSSUM, P.S.
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Attorneys for Plaintiff

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Attorneys for Defendant

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
3 production of any documents, electronically stored information (ESI) or
4 information, whether inadvertent or otherwise, in this proceeding shall not, for the
5 purposes of this proceeding or any other federal or state proceeding, constitute a
6 waiver by the producing party of any privilege applicable to those documents,
7 including the attorney-client privilege, attorney work-product protection, or any
8 other privilege or protection recognized by law. This Order shall be interpreted to
9 provide the maximum protection allowed by Fed. R. Evid. 502(d). The provisions
10 of Fed. R. Evid. 502(b) do not apply. Nothing contained herein is intended to or
11 shall serve to limit a party's right to conduct a review of documents, ESI or
12 information (including metadata) for relevance, responsiveness and/or segregation
13 of privileged and/or protected information before production. Information produced
14 in discovery that is protected as privileged or work product shall be immediately
15 returned to the producing party.

16 DATED: June 27, 2024.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare

under penalty of perjury that I have read in its entirety and understand the Stipulated

Protective Order that was issued by the United States District Court for the Western

District of Washington on [date] in the case of *ALEXIS ROCHA v. ASURION, LLC*,

Case No. 2:24-cv-00017-TOR. I agree to comply with and to be bound by all the

terms of this Stipulated Protective Order and I understand and acknowledge that

failure to so comply could expose me to sanctions and punishment in the nature of

contempt. I solemnly promise that I will not disclose in any manner any information

or item that is subject to this Stipulated Protective Order to any person or entity

except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the

Western District of Washington for the purpose of enforcing the terms of this

Stipulated Protective Order, even if such enforcement proceedings occur after

termination of this action.

//

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____

4 Signature: _____

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