

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PRECISION TOXICOLOGY, LLC
D/B/A PRECISION DIAGNOSTICS,

Plaintiff,

vs.

STEPHANIE CERNI CRONE, an
individual, and ELEVATE
TOXICOLOGY INC., a Colorado
corporation,

Defendants.

Case No. 3:20-cv-02135-BEN-RBB

**ORDER GRANTING JOINT MOTION
FOR STIPULATED PROTECTIVE
ORDER [ECF NO. 34]**

Judge: Hon. Roger T. Benitez
Place: Courtroom 5A

STEPHANIE CERNI CRONE, an
individual

Counter-Complainant,

vs.

PRECISION TOXICOLOGY, LLC, a
California Limited Liability Company;
JASON HANSON, an individual; and
DOES 1-25,

Counter-Defendants.

1 The Court recognizes that at least some of the documents and information
2 (“materials”) being sought through discovery in the above-captioned action are, for
3 competitive reasons, normally kept confidential by the parties. The parties have agreed to
4 be bound by the terms of this Protective Order (“Order”) in this action. The materials to be
5 exchanged throughout the course of the litigation between the parties may contain trade
6 secret or other confidential research, technical, cost, price, marketing or other commercial
7 information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The
8 purpose of this Order is to protect the confidentiality of such materials as much as practical
9 during the litigation. THEREFORE:

10 DEFINITIONS

11 1. The term “confidential information” will mean and include information
12 contained or disclosed in any materials, including documents, portions of documents,
13 answers to interrogatories, responses to requests for admissions, trial testimony, deposition
14 testimony, and transcripts of trial testimony and depositions, including data, summaries,
15 and compilations derived therefrom that is deemed to be confidential information by any
16 party to which it belongs.

17 2. The term “materials” will include, but is not be limited to: documents;
18 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
19 material that identify customers or potential customers; price lists or schedules or other
20 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
21 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
22 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
23 compilations from which information can be obtained and translated into reasonably usable
24 form through detection devices; sketches; drawings; notes (including laboratory notebooks
25 and records); reports; instructions; disclosures; other writings; models and prototypes and
26 other physical objects.

27 3. The term “counsel” will mean outside counsel of record, and other attorneys,
28 paralegals, secretaries, and other support staff employed in the law firms identified below:

- 1 • **Foley & Lardner LLP**, outside counsel of record for Plaintiff and Counter-
2 Defendant Precision Toxicology, LLC dba Precision Diagnostics
3 (“Plaintiff”). “Counsel” also includes Jennifer Lieberman and Darrel Taylor,
4 in-house attorneys for Plaintiff.
- 5 • **San Diego Biz Law APC**, outside counsel of record for Defendant and
6 Counter-Complainant Stephanie Cerni Crone and Defendant Elevate
7 Toxicology, Inc (“Defendants”).

8 GENERAL RULES

9 4. Each party to this litigation that produces or discloses any materials, answers
10 to interrogatories, responses to requests for admission, trial testimony, deposition
11 testimony, and transcripts of trial testimony and depositions, or information that the
12 producing party believes should be subject to this Protective Order may designate the same
13 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

14 a. Designation as “CONFIDENTIAL”: Any party may designate
15 information as “CONFIDENTIAL” only if, in the good faith belief of such party and its
16 counsel, the unrestricted disclosure of such information could be potentially prejudicial to
17 the business or operations of such party.

18 b. Designation as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY”: Any party may designate information as “HIGHLY CONFIDENTIAL –
20 ATTORNEYS’ EYES ONLY” only if, in the good faith belief of such party and its counsel,
21 the information is among that considered to be most sensitive by the party, including but
22 not limited to trade secret or other confidential research, development, financial or other
23 commercial information.

24 5. In the event the producing party elects to produce materials for inspection, no
25 marking need be made by the producing party in advance of the initial inspection. For
26 purposes of the initial inspection, all materials produced will be considered as “HIGHLY
27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” and must be treated as such pursuant
28 to the terms of this Order. Thereafter, upon selection of specified materials for copying by

1 the inspecting party, the producing party must, within a reasonable time prior to producing
2 those materials to the inspecting party, mark the copies of those materials that contain
3 confidential information with the appropriate confidentiality marking.

4 6. Whenever a deposition taken on behalf of any party involves a disclosure of
5 confidential information of any party:

- 6 a. the deposition or portions of the deposition must be designated as
7 containing confidential information subject to the provisions of this
8 Order; such designation must be made on the record whenever possible,
9 but a party may designate portions of depositions as containing
10 confidential information after transcription of the proceedings; [A]
11 party will have until fourteen (14) days after receipt of the deposition
12 transcript to inform the other party or parties to the action of the
13 portions of the transcript to be designated “CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
- 15 b. the disclosing party will have the right to exclude from attendance at
16 the deposition, during such time as the confidential information is to be
17 disclosed, any person other than the deponent, counsel (including their
18 staff and associates), the court reporter, and the person(s) agreed upon
19 pursuant to paragraph 8 below; and
- 20 c. the originals of the deposition transcripts and all copies of the
21 deposition must bear the legend “CONFIDENTIAL” or “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as appropriate,
23 and the original or any copy ultimately presented to a court for filing
24 must not be filed unless it can be accomplished under seal, identified as
25 being subject to this Order, and protected from being opened except by
26 order of this Court.

27 7. All confidential information designated as “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” must not be disclosed by the receiving

1 party to anyone other than those persons designated within this order and must be handled
2 in the manner set forth below and, in any event, must not be used for any purpose other
3 than in connection with this litigation, unless and until such designation is removed either
4 by agreement of the parties, or by order of the Court.

5 8. Information designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
6 EYES ONLY” must be viewed only by counsel (as defined in paragraph 3) of the receiving
7 party, and by independent experts under the conditions set forth in this Paragraph. The right
8 of any independent expert to receive any confidential information will be subject to the
9 advance approval of such expert by the producing party or by permission of the Court. The
10 party seeking approval of an independent expert must provide the producing party with the
11 name and curriculum vitae of the proposed independent expert, and an executed copy of
12 the form attached hereto as Exhibit A, in advance of providing any confidential information
13 of the producing party to the expert. Any objection by the producing party to an
14 independent expert receiving confidential information must be made in writing within
15 fourteen (14) days following receipt of the identification of the proposed expert.
16 Confidential information may be disclosed to an independent expert if the fourteen (14)
17 day period has passed and no objection has been made. The approval of independent
18 experts must not be unreasonably withheld.

19 9. Information designated “CONFIDENTIAL” must be viewed only by counsel
20 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant to the
21 terms of paragraph 8), by court personnel, and by the additional individuals listed below,
22 provided each such individual has read this Order in advance of disclosure and has agreed
23 in writing to be bound by its terms:

- 24 a. Executives who are required to participate in policy decisions with
25 reference to this action;
- 26 b. Technical personnel of the parties with whom Counsel for the parties
27 find it necessary to consult, in the discretion of such counsel, in
28 preparation for trial of this action; and

1 c. Stenographic and clerical employees associated with the individuals
2 identified above.

3 10. With respect to material designated “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” any person indicated on the face of
5 the document to be its originator, author or a recipient of a copy of the document, may be
6 shown the same.

7 11. All information which has been designated as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” by the producing or
9 disclosing party, and any and all reproductions of that information, must be retained in the
10 custody of the counsel for the receiving party identified in paragraph 3, except that
11 independent experts authorized to view such information under the terms of this Order may
12 retain custody of copies such as are necessary for their participation in this litigation.

13 12. Before any materials produced in discovery, answers to interrogatories,
14 responses to requests for admissions, deposition transcripts, or other documents which are
15 designated as confidential information are filed with the Court for any purpose, the party
16 seeking to file such material must seek permission of the Court to file the material under
17 seal.

18 13. At any stage of these proceedings, any party may object to a designation of
19 the materials as confidential information. The party objecting to confidentiality must
20 notify, in writing, counsel for the designating party of the objected-to materials and the
21 grounds for the objection. If the dispute is not resolved consensually between the parties
22 within seven (7) days of receipt of such a notice of objections, the objecting party may
23 move the Court for a ruling on the objection. The materials at issue must be treated as
24 confidential information, as designated by the designating party, until the Court has ruled
25 on the objection or the matter has been otherwise resolved.

26 14. All confidential information must be held in confidence by those inspecting
27 or receiving it, and must be used only for purposes of this action. Counsel for each party,
28 and each person receiving confidential information must take reasonable precautions to

1 prevent the unauthorized or inadvertent disclosure of such information. If confidential
2 information is disclosed to any person other than a person authorized by this Order, the
3 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
4 relating to the unauthorized disclosure to the attention of the other parties and, without
5 prejudice to any rights and remedies of the other parties, make every effort to prevent
6 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

7 15. No party will be responsible to another party for disclosure of confidential
8 information under this Order if the information in question is not labeled or otherwise
9 identified as such in accordance with this Order.

10 16. If a party, through inadvertence, produces any confidential information
11 without labeling or marking or otherwise designating it as such in accordance with this
12 Order, the designating party may give written notice to the receiving party that the
13 document or thing produced is deemed confidential information, and that the document or
14 thing produced should be treated as such in accordance with that designation under this
15 Order. The receiving party must treat the materials as confidential, once the designating
16 party so notifies the receiving party. If the receiving party has disclosed the materials before
17 receiving the designation, the receiving party must notify the designating party in writing
18 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
19 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” - SUBJECT TO
21 PROTECTIVE ORDER.

22 17. Nothing within this order will prejudice the right of any party to object to the
23 production of any discovery material on the grounds that the material is protected as
24 privileged or as attorney work product.

25 18. Nothing in this Order will bar counsel from rendering advice to their clients
26 with respect to this litigation and, in the course thereof, relying upon any information
27 designated as confidential information, provided that the contents of the information must
28 not be disclosed.

1 19. This Order will be without prejudice to the right of any party to oppose
2 production of any information for lack of relevance or any other ground other than the mere
3 presence of confidential information. The existence of this Order must not be used by either
4 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
5 Procedure.

6 20. Nothing within this order will be construed to prevent disclosure of
7 confidential information if such disclosure is required by law or by order of the Court.

8 21. Upon final termination of this action, including any and all appeals, counsel
9 for each party must, upon request of the producing party, return all confidential information
10 to the party that produced the information, including any copies, excerpts, and summaries
11 of that information, or must destroy same at the option of the receiving party, and must
12 purge all such information from all machine-readable media on which it resides.
13 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
14 memoranda, motions, and other documents filed with the Court that refer to or incorporate
15 confidential information, and will continue to be bound by this Order with respect to all
16 such retained information. Further, attorney work product materials that contain
17 confidential information need not be destroyed, but, if they are not destroyed, the person
18 in possession of the attorney work product will continue to be bound by this Order with
19 respect to all such retained information.

20 22. The restrictions and obligations set forth within this order will not apply to
21 any information that: (a) the parties agree should not be designated confidential
22 information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the
23 parties agree, or the Court rules, has become public knowledge other than as a result of
24 disclosure by the receiving party, its employees, or its agents in violation of this Order; or
25 (d) has come or will come into the receiving party's legitimate knowledge independently
26 of the production by the designating party. Prior knowledge must be established by
27 preproduction documentation.

28 ///

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____[print or type full address],

6 declare under penalty of perjury that I have read in its entirety and understand the Stipulated
7 Protective Order that was issued by the United States District Court for the Southern
8 District of California on _____[date] in the case of
9 *Precision Toxicology, LLC d/b/a Precision Diagnostics v. Stephanie Cerni Crone and*
10 *Elevate Toxicology Inc.*, Southern District of California, Case No. 3:20-CV-02135-BEN-
11 RBB. I agree to comply with and to be bound by all the terms of this Stipulated Protective
12 Order, and I understand and acknowledge that failure to so comply could expose me to
13 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
14 disclose in any manner any information or item that is subject to this Stipulated Protective
15 Order to any person or entity except in strict compliance with the provisions of this Order.

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

20
21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24
25 Signature: _____