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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE TIMOTHY JOSEPH GRANT
PELLON LAY, Plaintiff, v. TIMOTHY JOSEPH GRANT, Defendant.
AND RELATED COUNTERCLAIM.

Case No.: 20-cv-02465-DMS (JLB)

**ORDER GRANTING JOINT
MOTION FOR A DISCOVERY
PROTECTIVE ORDER**

[ECF No. 47]

Before the Court is the parties’ Joint Motion for a Discovery Protective Order. (ECF No. 47.) For good cause shown, the Joint Motion is **GRANTED**, and the following Protective Order is entered:

PROTECTIVE ORDER

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are normally

1 kept confidential by the parties. The parties have agreed to be bound by the terms of this
2 Protective Order (“Order”) in this action.

3 The materials to be exchanged throughout the course of the litigation between the
4 parties may contain sensitive medical and/or psychiatric information as is contemplated by
5 Federal Rule of Civil Procedure 26(c). The purpose of this Order is to protect the
6 confidentiality of such materials as much as practical during the litigation.

7 DEFINITIONS

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

14 2. The term “materials” will include, but is not be limited to: documents;
15 correspondence; memoranda; bulletins; letters; statements; cancelled checks; contracts;
16 invoices; drafts; books of account; worksheets; notes of conversations; desk diaries;
17 appointment books; expense accounts; recordings; photographs; motion pictures;
18 compilations from which information can be obtained and translated into reasonably usable
19 form through detection devices; sketches; drawings; notes (including laboratory notebooks
20 and records); reports; instructions; disclosures; other writings; models, prototypes, and
21 other physical objects.

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

24
25 Steven L. Victor, Esq.
26 910 Grand Avenue, Suite 202
27 San Diego, CA 92109

25 Timothy J. Grant, Pro Se
26 3952 Clairemont Mesa Blvd., Suite D155
27 San Diego, CA 92117

1 Douglas V. Brust, Esq.
2 KONOSKE AKIYAMA BRUST LLP
3 16880 West Bernardo Drive, Suite 250
4 San Diego, CA 92127

4 GENERAL RULES

5 4. Each party to this litigation that produces or discloses any materials, answers
6 to interrogatories and requests for admission, trial testimony, deposition testimony, and
7 transcripts of trial testimony and depositions, or information that the producing party
8 believes should be subject to this Order may designate the same as “CONFIDENTIAL” or
9 “CONFIDENTIAL – FOR COUNSEL ONLY.”

10 a. Designation as “CONFIDENTIAL”: A party or non-party subject to
11 this Order may only designate documents or other information in this action as
12 “CONFIDENTIAL” if the designating party or non-party has an articulable, good
13 faith basis to believe that each document or other information designated as
14 confidential qualifies for protection under Federal Rule of Civil Procedure 26(c).

15 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any
16 party may designate information as “CONFIDENTIAL – FOR COUNSEL ONLY”
17 only if, in the good faith belief of such party and its counsel, the information is
18 among that considered to be most sensitive by the party, including but not limited to
19 Medical and Psychological records, financial or other commercial information. The
20 Parties’ personal information not otherwise relevant to this action such as phone
21 numbers, home addresses, social security numbers, driver’s license numbers are
22 confidential and privileged from production or discovery. With regard to any
23 Psychological or Medical and Psychological/Psychiatric records of
24 Plaintiff/Counterclaim Defendant, said records shall not be produced absent written
25 agreement by the parties, review by discovery Referee, Review by the Magistrate
26 Judge or by Court Order.

27 5. In the event the producing party elects to produce materials for inspection, no
28 marking need be made by the producing party in advance of the initial inspection. For

1 purposes of the initial inspection, all materials produced will be considered as
2 “CONFIDENTIAL – FOR COUNSEL ONLY,” and must be treated as such pursuant to
3 the terms of this Order. Thereafter, upon selection of specified materials for copying by
4 the inspecting party, the producing party must, within a reasonable time prior to producing
5 those materials to the inspecting party, mark the copies of those materials that contain
6 confidential information with the appropriate confidentiality marking.

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

9 a. the deposition or portions of the deposition must be designated as
10 containing confidential information subject to the provisions of this Order; such
11 designation must be made on the record whenever possible, but a party may
12 designate portions of depositions as containing confidential information after
13 transcription of the proceedings; a party will have until 14 calendar days after receipt
14 of the deposition transcript to inform the other party or parties to the action of the
15 portions of the transcript to be designated “CONFIDENTIAL” or
16 “CONFIDENTIAL – FOR COUNSEL ONLY.”

17 b. the disclosing party will have the right to exclude from attendance at
18 the deposition, during such time as the confidential information is to be disclosed,
19 any person other than the deponent, counsel (including their staff and associates),
20 the court reporter, and the person(s) agreed upon pursuant to Paragraph 9 below; and

21 c. the originals of the deposition transcripts and all copies of the
22 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR
23 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately
24 presented to a court for filing must not be filed unless it can be accomplished under
25 seal, identified as being subject to this Order, and protected from being opened
26 except by order of the Court.

27 7. All confidential information designated as “CONFIDENTIAL” or
28 “CONFIDENTIAL – FOR COUNSEL 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 “CONFIDENTIAL – FOR COUNSEL ONLY” must
6 be viewed only by counsel (as defined in Paragraph 3) of the receiving party, and by
7 independent experts under the conditions set forth in this Paragraph. Any objection by the
8 producing party to an independent expert receiving confidential information must be made
9 in writing within 14 calendar days following receipt of the identification of the proposed
10 expert. Confidential information may be disclosed to an independent expert if the fourteen-
11 day period has passed and no objection has been made.

12 9. Information designated “confidential” must be viewed only by counsel (as
13 defined in Paragraph 3) of the receiving party, by independent experts (pursuant to the
14 terms of Paragraph 8), by court personnel, and by the additional individuals listed below,
15 provided each such individual has read this Order in advance of disclosure and has
16 executed a copy of the form attached hereto as Exhibit A:

17 a. Stenographic and clerical employees associated with the individuals
18 identified above.

19 10. With respect to material designated “CONFIDENTIAL” or
20 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the
21 document to be its originator, author, or a recipient of a copy of the document, may be
22 shown the same.

23 11. All information which has been designated as “CONFIDENTIAL” or
24 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and
25 any and all reproductions of that information, must be retained in the custody of the counsel
26 for the receiving party identified in Paragraph 3, except that independent experts authorized
27 to view such information under the terms of this Order may retain custody of copies such
28 as are necessary for their participation in this litigation.

1 12. Before any materials produced in discovery, answers to interrogatories or
2 requests for admissions, deposition transcripts, or other documents which are designated
3 as confidential information are filed with the Court for any purpose, the party seeking to
4 file such material must seek permission of the Court to file the material under seal. An
5 application to file a document under seal shall be served on opposing counsel, and on the
6 person or entity that has custody and control of the document, if different from opposing
7 counsel. If the application to file a document designated as confidential under seal is being
8 made by the non-designating party, then, upon request, the designating party must promptly
9 provide the applicant with a legal basis for the confidential designation to include in the
10 application. If opposing counsel, or the person or entity that has custody and control of the
11 document, wishes to oppose the application, he/she must contact the chambers of the judge
12 who will rule on the application, to notify the judge's staff that an opposition to the
13 application will be filed.

14 13. At any stage of these proceedings, any party may object to a designation of
15 materials as confidential information. The party objecting to confidentiality must notify,
16 in writing, counsel for the designating party of the objected-to materials and the grounds
17 for the objection. If the dispute is not resolved consensually between the parties after
18 meeting and conferring within 14 calendar days of receipt of such a notice of objections,
19 the parties may jointly request the Court's assistance with the dispute, in accordance with
20 Judge Burkhardt's Civil Chambers Rules. The materials at issue must be treated as
21 confidential information, as designated by the designating party, until the Court has ruled
22 on the objection or the matter has been otherwise resolved.

23 14. All confidential information must be held in confidence by those inspecting
24 or receiving it and must be used only for purposes of this action. Counsel for each party,
25 and each person receiving confidential information, must take reasonable precautions to
26 prevent the unauthorized or inadvertent disclosure of such information. If confidential
27 information is disclosed to any person other than a person authorized by this Order, the
28 party responsible for the unauthorized disclosure must immediately bring all pertinent facts

1 relating to the unauthorized disclosure to the attention of the other parties and, without
2 prejudice to any rights and remedies of the other parties, make every effort to prevent
3 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

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

7 16. If a party, through inadvertence, produces any confidential information
8 without labeling or marking or otherwise designating it as such in accordance with this
9 Order, the designating party may give written notice to the receiving party that the
10 document or thing produced is deemed confidential information, and that the document or
11 thing produced should be treated as such in accordance with that designation under this
12 Order. The receiving party must treat the materials as confidential, once the designating
13 party so notifies the receiving party. If the receiving party has disclosed the materials
14 before receiving the designation, the receiving party must notify the designating party in
15 writing of each such disclosure.

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

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

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

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

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

15 22. Absent an *ex parte* motion made within 10 calendar days of the termination
16 of the case, the parties understand that the Court will destroy any confidential documents
17 in its possession

18 23. The restrictions and obligations set forth within this Order will not apply to
19 any information that:

- 20 a. the parties agree should not be designated confidential information;
21 b. the parties agree, or the Court rules, is already public knowledge;
22 c. the parties agree, or the Court rules, has become public knowledge other
23 than as a result of disclosure by the receiving party, its employees, or its agents in
24 violation of this Order; or
25 d. has come or will come into the receiving party's legitimate knowledge
26 independently of the production by the designating party. Prior knowledge must be
27 established by pre-production documentation.
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1 24. The restrictions and obligations within this Order will not be deemed to
2 prohibit discussions of any confidential information with anyone if that person already has
3 or obtains legitimate possession of that information.

4 25. Transmission by e-mail or some other currently utilized method of
5 transmission is acceptable for all notification purposes within this Order.


6 26. This Order may be modified by agreement of the parties, subject to approval
7 by the Court.

8 27. The Court may modify the terms and conditions of this Order for good cause,
9 or in the interest of justice, or on its own order at any time in these proceedings.

10 28. Without separate court order, this joint motion and the parties' stipulation do
11 not change, amend, or circumvent any court rule or local rule.

12 **IT IS SO ORDERED.**

13 Dated: June 2, 2021

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15 Hon. Jill L. Burkhardt
16 United States Magistrate Judge
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