

1 LATHAM & WATKINS LLP
2 Mark A. Finkelstein (Bar No. 173851)
3 mark.finkelstein@lw.com
4 650 Town Center Drive, 20th Floor
5 Costa Mesa, California 92626-1925
6 Telephone: (714) 540-1235
7 Facsimile: (714) 755-8290

8 LATHAM & WATKINS LLP
9 Jennifer L. Barry (Bar No. 228066)
10 jennifer.barry@lw.com
11 600 West Broadway, Suite 1800
12 San Diego, California 92101-3375
13 Telephone: (619) 236-1234
14 Facsimile: (619) 696-7419

15 Attorneys for Plaintiff
16 OXY-HEALTH, LLC

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 OXY-HEALTH, LLC, a California
20 limited liability company,

21 Plaintiff,

22 v.

23 DIANE PECHENICK, an individual;
24 CALIFORNIA REALTY PARTNERS,
25 INC. d/b/a HEALING DIVES, INC., a
26 California corporation; JASON ROSE
27 d/b/a HYPERBARIC SUPPORT, an
28 individual; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. CV09-3796 RSWL (SHx)

**STIPULATION GOVERNING THE
DESIGNATION AND HANDLING
OF CONFIDENTIAL MATERIALS;
[PROPOSED] ORDER**

JUDGE: Hon. Ronald S.W. Lew
ACTION FILED: Sept. 24, 2008

1 IT IS HEREBY STIPULATED by and between Plaintiff Oxy-Health, LLC
2 (“Plaintiff”) and Defendants Diane Pechenick, California Realty Partners, Inc.
3 d/b/a Healing Dives, Inc. and Jason Rose d/b/a Hyperbaric Support (“Defendants”)
4 (collectively, the “Parties”) as follows:

5 **A. GENERAL PROVISIONS AND DEFINITIONS**

6 1. Scope

7 a. This Stipulated Order Governing the Designation and Handling
8 of Confidential Materials (“Order”) shall apply to all “writings,” “recordings” and
9 “photographs” as defined in sections 1001(1) and (2) of the Federal Rules of
10 Evidence and to any other tangible thing produced pursuant to Rule 34 of the
11 Federal Rules of Civil Procedure. This definition applies equally to original as
12 well as to derivative writings, recordings and photographs (including, but not
13 limited to, copies, extracts, digests, compilations and summaries).

14 b. This Order shall govern any document or information furnished
15 by any party, or third parties, to any other party in connection with the discovery
16 and pre-trial phase of this action. This includes, but is not limited to, material
17 produced in connection with initial disclosures or in response to demands for
18 production of documents or other things; responses to interrogatories; responses to
19 requests for admission; responses to subpoenas; deposition testimony and exhibits;
20 and all copies, extracts, summaries, compilations, designations, and portions of the
21 foregoing. This Order does not govern proceedings during trial, nor does it
22 prohibit any party from seeking an order to govern proceedings during trial.

23 2. Materials Outside of This Order’s Scope

24 The restrictions of this Order will not apply to:

25 a. Any material that, at the time of disclosure, is in the public
26 domain, in a form the same as or substantially similar to that disclosed; and

27 b. Any material that, after disclosure, becomes part of the public
28 domain, in a form the same as or substantially similar to that disclosed, as a result

1 of publication not involving a violation of this Order.

2 3. “Confidential Material” Defined

3 For the purposes of this Order, “Confidential Material” shall mean those
4 documents or information, of any type, kind or character, designated as
5 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS EYES ONLY” by
6 any of the producing or receiving parties, including, but not limited to documents
7 (in any form), information contained in a document, information revealed during a
8 deposition and information revealed in written discovery responses.

9 In designating information as Confidential Matter, a party will make such
10 designation only as to that information which it, in good faith, believes contains
11 confidential or proprietary trade secrets, operations, research, know-how,
12 developmental information, or other non-public information. Should such
13 information be publicly disclosed, it would cause significant competitive harm to
14 the designating party, and could impair property rights.

15 Confidentiality is necessary in this case because this matter is a dispute
16 between competitors. Accordingly, trade secrets and other proprietary and
17 confidential information have been, and will continue to be, the subject of
18 discovery. Public disclosure of trade secrets and confidential information
19 generally impairs the property right, and public disclosure of operations, research,
20 know-how, developmental information, or other non-public information could
21 impair the ability to seek intellectual property protection including but not limited
22 to patent protection and/or trade secret protection, as well as undermine
23 competitive advantage and remove the incentive for innovation. In addition, public
24 disclosure of Confidential Materials could violate an obligation of confidentiality
25 to a third person, including a court.

26 Nothing shall be designated as “CONFIDENTIAL – ATTORNEYS EYES
27 ONLY” except Confidential Matter that discloses highly sensitive competitive
28 information, that the other party in this litigation may be able to use to inflict direct

1 competitive harm on the designating party. In making this designation, the party
2 shall act in good faith. Such information includes, but is not limited to: trade
3 secrets; business plans; sales or marketing strategies; product development
4 information; corporate strategies and processes; profit information; financial
5 results and projections; sales data; and highly sensitive competitive information
6 concerning customers, vendors, dealers, employees or consultants.

7 4. “Qualified Persons” Defined

8 For the purposes of this Order, “Qualified Persons” shall mean:

- 9 a. The Parties’ outside counsel of record in this action and regular
10 and temporary partners, associates, paralegals, employees or service contractors
11 (such as document copy services, graphic design services, jury consultants, mock
12 jurors, and messengers) of such counsel to whom it is necessary that the
13 information or material be shown for the purposes of this litigation;
- 14 b. Any independent outside expert or consultant retained by the
15 Parties’ outside counsel or the Parties to assist in this action;
- 16 c. Personnel of the Court, pursuant to this Order;
- 17 d. Any interpreter, videographer, or court or other shorthand
18 reporter or typist translating, recording or transcribing testimony;
- 19 e. the Parties;
- 20 f. Any person who authored or was an identified original recipient
21 of the Confidential Material; and
- 22 g. Any other person only upon order of the Court or upon written
23 consent of the Parties.

24 **B. DESIGNATION PROCEDURES**

25 Documents or information may be designated as Confidential Material as
26 follows:

27 1. Written Materials and Objects

28 Written materials or objects may be designated as Confidential Material by

1 placing on the written materials or physical objects in a conspicuous place the
2 legend: "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES
3 ONLY."

4 2. Non-Written Materials

5 Materials not in the form of writings or physical objects (including, but not
6 limited to, depositions or other pre-trial testimony) or materials that cannot be
7 conveniently designated as set forth above may be designated as Confidential
8 Material by a statement on the record, by counsel, during such deposition or other
9 proceeding that the entire transcript or a specific portion shall be designated as
10 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS EYES ONLY."

11 3. Time of Designation

12 It is preferred that the designation be made at the time such Confidential
13 Material is produced or disclosed. However, a party or third party may designate
14 any written or non-written materials or objects as Confidential Material by giving
15 written notice within a reasonable period of time after the information is produced
16 or disclosed. No party or third party shall have any obligation or liability due to
17 any disclosure of the information that occurred prior to the receipt of such notice.

18 **C. DISSEMINATION OF CONFIDENTIAL MATERIAL**

19 1. Disclosure of Confidential Material

20 Confidential Material shall be used solely to prepare for and try this
21 litigation and any appeal, and for no other purpose whatsoever, and shall not be
22 disclosed to any person except in accordance with the terms of this Order.

23 Confidential Matter shall not be disclosed or made available by any party to
24 this litigation to persons other than Qualified Persons as defined in Paragraph A(4)
25 above; provided, however, Confidential Matter designated as "CONFIDENTIAL –
26 ATTORNEYS EYES ONLY" shall be restricted in circulation to Qualified
27 Persons described in paragraph A(4)(a), (b), (c), (d), (f) and (g) above.

28 Confidential Material shall not be disclosed to persons described in section (b) or

1 (g) unless or until such person has executed an affidavit in the form attached as
2 Exhibit "A."

3 2. Attorneys' Actions

4 a. Nothing in this Order will bar or otherwise restrict an attorney
5 who is authorized to receive Confidential Material from rendering advice to his or
6 her client with respect to this action or generally referring to or relying on his or
7 her examination of Confidential Material that has been produced under this Order.

8 b. In rendering such advice or in otherwise communicating with
9 his or her client, the attorney will not disclose the specific content of any
10 Confidential Material produced, if disclosure would not otherwise be permitted
11 under the terms of this Order.

12 **D. OBJECTIONS TO DESIGNATION**

13 A party may object to a designation of documents or information as
14 Confidential Material by serving a written objection upon the designating party.
15 The designating party shall notify the objecting party in writing of the bases for the
16 asserted designation within ten (10) calendar days after receiving any written
17 objection. The Parties shall confer in good faith as to the validity of the
18 designation within five (5) calendar days after the challenging party has received
19 the notice of the bases for the asserted designation.

20 To the extent the Parties are unable to reach an agreement as to the
21 designation, the objecting party may make an appropriate application to the Court
22 with any confidential portions to be kept under seal, requesting that specifically
23 identified documents, information, and/or testimony be excluded from the
24 provisions of this Order. The burden of proving the confidentiality of the
25 designated document and/or information remains with the party asserting such
26 confidentiality. Until the Parties or the Court finally resolve a dispute over the
27 asserted designation, all Parties and persons shall treat the information or materials
28 in question as Confidential Material, pursuant to the terms of this Order.

1 **E. USE AND HANDLING OF CONFIDENTIAL MATERIAL**

2 1. Use of Confidential Material

3 Any Confidential Material will be held in confidence by each receiving
4 party; will be used by the Parties solely in connection with this litigation, and not
5 for any business, competitive, or governmental purpose or function; will be used
6 by each receiving party for purposes of this action only and not for any business or
7 other purpose unless agreed to in writing by all Parties to this action or as
8 authorized by the further Order of the Court; and will not be disclosed to, or the
9 substance discussed with, any person who is not authorized to receive such
10 Confidential Material pursuant to this Order.

11 2. Use of Confidential Material in Pleadings or Evidence

12 Pleadings, memoranda or other papers that contain Confidential Material
13 shall not be delivered to the Clerk of the Court, except in compliance with Local
14 Rule 79-5. Specifically, any Party wishing to present such information to the
15 Court will attempt to file such information under seal, pursuant to Local Rule 79-5.

16 3. Use of Confidential Material in Testimony and Depositions

17 Any person may be interviewed and examined as a witness at depositions
18 and may testify concerning (1) all Confidential Material of which the person has
19 prior knowledge, and (2) as to Confidential Material for which his or her company
20 is the producing party, unless the person would not have access to the Confidential
21 Material during the normal course of his or her employment, the producing party
22 objects to such disclosure, and such objection is based on a good-faith assertion
23 that the producing party has a legitimate business reason why such disclosure
24 should not be made. If an interview or examination concerns Confidential
25 Material, any party will have the right to exclude from the portion of the
26 examination or interview concerning the Confidential Material any person other
27 than the witness, the witness' attorneys, and persons authorized to review such
28 Confidential Material. If the witness is represented by an attorney who is not

1 authorized to review the Confidential Material, then before the interview or
2 examination, the producing party will be given the opportunity to seek a further
3 order or the attorney will be requested to provide a declaration, in the form of
4 Exhibit "A" to this Order.

5 4. Subpoenas

6 If any person or party having possession, custody or control of any
7 Confidential Material receives a subpoena or other process or order to produce
8 Confidential Material, he or she will promptly:

9 a. Notify in writing the attorneys of record of the party claiming
10 confidentiality of the Confidential Material sought by the subpoena or other
11 process or order;

12 b. Furnish those attorneys with a copy of the subpoena or other
13 process or order; and

14 c. Provide reasonable cooperation with respect to a procedure to
15 protect the Confidential Material. If the party asserting confidentiality makes a
16 motion to quash or modify the subpoena, process or order, there will be no
17 disclosure, process or order until the Court has ruled on the motion, and then only
18 in accordance with the ruling. If no motion is made despite a reasonable
19 opportunity to do so, the person or party receiving the subpoena or other process or
20 order will be entitled to comply with it, if the person or party has fulfilled its
21 obligations under this Order.

22 5. Safekeeping of Confidential Material

23 Confidential Material shall be maintained in the custody of outside trial
24 counsel of record for the Parties except that: (a) any court reporter who transcribes
25 testimony given in this action may maintain any such designated documents for the
26 purpose of rendering his or her normal transcribing services; and (b) partial or
27 complete copies of those documents may be retained by authorized recipients
28 entitled to access to such documents under the terms of this Order to the extent

1 necessary for their study, analysis and preparation of the case. A person with
2 custody of documents designated as Confidential Material shall maintain them in a
3 manner that limits access to those persons entitled under this Order to examine the
4 documents so designated.

5 **F. MISCELLANEOUS PROVISIONS**

6 1. Effect

7 Entering into, agreeing to, and/or producing or receiving Confidential
8 Material, or otherwise complying with the terms of this Order, shall not:

9 a. Operate as an admission by any party that any particular
10 Confidential Material does or does not contain or reflect trade secrets, proprietary
11 or commercially sensitive information, or any other type of confidential
12 information;

13 b. Operate as an admission by any party that the restrictions and
14 procedures set forth herein constitute or do not constitute adequate protection for
15 any particular information deemed by any party to be Confidential Material;

16 c. Prejudice in any way the rights of the Parties to object to the
17 production of documents or giving of information they consider not subject to
18 discovery;

19 d. Prejudice in any way the rights of any party to object to the
20 authenticity or admissibility into evidence of any document, testimony or other
21 evidence subject to this Order;

22 e. Prejudice in any way the rights of a party to petition the Court
23 for a further protection relating to any purportedly confidential information;

24 f. Prejudice in any way the rights of a party to make a showing
25 that materials of proprietary or competitive value, but not specifically included in
26 the category of Confidential Material, may be properly designated as such;

27 g. Prevent the Parties to this Order from agreeing in writing or on
28 the record during a deposition or hearing in this action to alter or waive the

1 provisions or protections provided for in this Order with respect to any particular
2 Confidential Material; or

3 h. Prejudice in any way the rights of a party to apply to the Court
4 at any time to modify or rescind the restrictions of this Order, when convenience or
5 necessity so requires.

6 The procedures set forth in this Order will not affect the rights of the Parties
7 to object to discovery on grounds other than those related to trade secrets or
8 proprietary information claims, nor will they relieve a party of the necessity of
9 proper response to discovery devices.

10 2. No Waiver

11 The taking of, or the failure to take, any action to enforce the provision of
12 this Order, or the failure to object to any designation or any such action or
13 omission, will not constitute a waiver of any right to seek and obtain protection or
14 relief, other than as specified in this Order, nor will it be construed to be admissible
15 or offered before any Court, agency or tribunal in this action or any other action, as
16 evidence for any claim or defense that any information is or is not relevant,
17 material, or otherwise discoverable; is or is not confidential or proprietary to any
18 party; or is or is not entitled to particular protection.

19 3. No Probative Value

20 This Order will not abrogate or diminish any contractual, statutory, or other
21 legal obligation or right of any party or person with respect to any confidential
22 information. The fact that Confidential Material is marked as "CONFIDENTIAL"
23 or "CONFIDENTIAL – ATTORNEYS EYES ONLY" under this Order will not be
24 considered to be determinative of what a trier of fact may decide to be confidential
25 or proprietary. The fact that Confidential Material has been designated as such
26 under this Order will not be relevant during the trial of this action, and the Parties
27 will jointly agree on an instruction to the jury regarding the lack of relevance of
28 this designation.

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4. Court's Jurisdiction

The Court retains jurisdiction to make amendments, modifications, deletions, and additions to this Order as the Court from time to time may consider appropriate. The provisions of this Order regarding the use or disclosure of Confidential Material will survive the termination of this action, and the Court will retain jurisdiction with respect to this Order.

5. Notices

Any of the notice requirements in this Order may be waived, in whole or in part, if such waiver is made in writing and signed by the attorney of record for the party against whom such waiver is sought.

6. Amendments

The Parties may not amend this Order, except in writing and by Order of this Court.

7. Privileged Documents

If any party inadvertently produces a document that it believes is privileged, the receiving party shall immediately return the document and may not claim a waiver based on the production.

8. Binding on All Parties

This Order, upon entry as such by the Court, shall bind the Parties represented by the undersigned counsel, the Parties' agents, officers, directors, employees, and representatives.

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IT IS SO STIPULATED.

Dated: November 10, 2009

LATHAM & WATKINS LLP

By: 
Mark A. Finkelstein

Attorneys for Plaintiff
OXY-HEALTH, LLC

Dated: November 12, 2009

TINGLEY PIONTKOWSKI LLP


By: 
Bruce Piontkowski

Attorneys for Defendants
DIANE PECHENICK,
CALIFORNIA REALTY
PARTNERS, INC. d/b/a HEALING
DIVES, INC. and JASON ROSE
d/b/a HYPERBARIC SUPPORT

ORDER

Good cause appearing, the foregoing stipulation is APPROVED.

IT IS SO ORDERED.

Dated: 

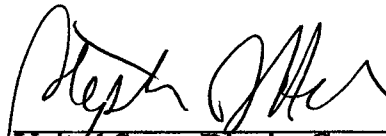

United States ~~District Court~~ Judge
Magistrate

Exhibit A

1 **EXHIBIT A**

2 I, _____ [Name] _____, of _____ [Company and address] _____

3 _____, declare under penalty of perjury that I have received a
4 copy of the Stipulated Order Governing the Designation and Handling of
5 Confidential Materials ("Order") entered in the matter of *Oxy-Health, LLC v.*
6 *Pechenick*, Case No. CV09-3796 RSWL (SHx). I have carefully read and
7 understand the provisions of the Order.

8 I am bound by the terms and conditions and all provisions of the Order, and
9 agree to comply with the terms and conditions of the Order. I will hold in
10 confidence, will not disclose to anyone other than those persons specifically
11 authorized by the Order, and will not copy or use except for the purposes of this
12 action, any Confidential Material that I receive in this action.

13 I submit to the jurisdiction of this Court for the purposes of enforcement of
14 this Order.

15 I declare under penalty of perjury under the laws of the United States that
16 the foregoing is true and correct. Executed on _____, 2009.

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Signature of Declarant