

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  
CENTRAL DISTRICT OF CALIFORNIA

KURT CASADINE on behalf of  
himself and all others similarly situated,

Plaintiffs,

vs.

MAXIM HEALTHCARE SERVICES,  
INC., a Maryland Corporation and  
DOES 1 through 100, inclusive,

Defendants.

Case No. CV 12-10078-DMG (CWx)

Assigned to the Honorable Dolly M. Gee

**PROTECTIVE ORDER**

**DISCOVERY MATTER**

1 In light of Plaintiff Kurt Casadine and Defendant Maxim Healthcare  
2 Services, Inc.'s (collectively, "the Parties") Stipulated Protective Order, and good  
3 cause appearing, the Court hereby grants the Parties' stipulation and hereby orders  
4 as follows:  
5

6 1. This Stipulated Protective Order governing the treatment of  
7 confidential information (the "Order") shall govern the handling of all documents,  
8 testimony and discovery responses, including all copies, excerpts and summaries  
9 thereof (collectively "Material"), provided during the course of the above-captioned  
10 case (the "Litigation") by the Parties to the Litigation or by non-parties, either  
11 voluntarily or as required by discovery requests made pursuant to the Federal Rules  
12 of Civil Procedure.  
13  
14

15 2. Whether or not designated as "Confidential Material," "Attorneys-  
16 Eyes Only Confidential Material," or "HIPAA Confidential Material" as defined in  
17 Paragraphs 6 and 7, all documents and information obtained through this lawsuit  
18 shall be used only for the purposes of investigating, preparing for and conducting  
19 the Litigation in which such Material is produced, including any appeals thereof,  
20 and shall not be used by the Parties or any other person for any commercial,  
21 business, competitive or other purpose without the prior written consent of the  
22 Producing Person or their counsel.  
23  
24

25 3. This Stipulation and Order is supported for good cause. This Order is  
26 necessary in order to protect certain "Confidential Material" of the parties as  
27  
28

1 defined in Paragraphs 6 and 7 below. In addition, as a “Covered Entity” under  
2 HIPAA, as that term is defined in the Standards for Privacy of Individually  
3 Identifiable Health Information (“Privacy Rule”) at 45 C.F.R. §106.103, and  
4 pursuant to other applicable federal and state laws, Defendant Maxim is obligated  
5 to protect its clients’ Personal Health Information (“PHI”), as defined under the  
6 Privacy Rule at 45 C.F.R. §106.103, in accordance with the Privacy Rule and the  
7 Security Standards Regulations (“Security Rule”), *see* 45 C.F.R. Parts 160 and 164,  
8 as well as other confidential information, from unauthorized disclosure and use.  
9 Disclosure and use of PHI is authorized only under certain conditions specified in  
10 the Privacy Rule and Security Rule. The Privacy Rule and Security Rule allow the  
11 use and disclosure of PHI under these circumstances, provided the parties stipulate  
12 to, and a court orders, a “Qualified Protective Order.” 45 C.F.R.  
13 §§164.512(e)(1)(ii)(B) and 164.512(e)(1)(iv)(A). A “Qualified Protective Order” is  
14 an order that prohibits the use or disclosure of PHI for any purpose other than the  
15 litigation for which such information was requested, and requires the return of  
16 documents (and all copies) containing PHI at the conclusion of the litigation. 45  
17 C.F.R. 164.512(e)(1)(v). The parties agree, and the Court finds, that under the  
18 circumstances set forth in this Order, the parties are permitted to request, disclose,  
19 or use Maxim’s clients’ PHI in the above-referenced litigation to obtain relevant  
20 information regarding Plaintiff’s claims or Maxim’s defenses. In agreeing to this  
21 Order, however, neither party waives any objection to the request, disclosure, or use

1 of PHI or any other Confidential Material covered by this Order pursuant to the  
2 Federal Rules of Civil Procedure.

3  
4 4. The provisions of this Order shall apply to any “person,” which, as  
5 used herein, shall include (a) all Parties to the Litigation, and (b) any other person  
6 or entity receiving, producing or disclosing Material in the Litigation.

7  
8 5. This Order shall not apply to any document, testimony or other  
9 information that: (a) is in the public domain at the time of disclosure; (b) becomes  
10 part of the public domain through no fault of the other party; or (c) the receiving  
11 party can show by written document that the information was in its rightful and  
12 lawful possession at the time of disclosure.

13  
14 6. Any person who produces Material (a “Producing Person”) may at any  
15 time designate as “Confidential,” “Attorneys-Eyes Only Confidential,” or “HIPAA  
16 Confidential” (collectively, “Confidential Material”), as applicable, any non-public  
17 Material that such person produces in the course of the Litigation that such  
18 Producing Person believes in good faith to contain Confidential Material.

19  
20 Confidential Material means Trade Secrets, confidential and proprietary business  
21 and financial information, and confidential personal information, including: (1)  
22 non-public information about any individual or individuals, including social  
23 security numbers, dates of birth, addresses or other personal contact information,  
24 HIPAA-protected Personal Health Information (“PHI”), personnel records,  
25 evaluations, compensation levels, databases, surveys, statistical analysis, analyses

1 of personnel practices, or other information incorporating or aggregating  
2 information pertaining to individuals not party to this litigation; (2) non-public  
3 information about any client or customer of Defendant, including financial  
4 information, business plans, and contractual agreements; (3) personally identifiable  
5 information about employees, clients or customers of Defendant; and (4) non-public  
6 information and documents regarding Defendant's selling and marketing practices,  
7 business plans, compensation practices, hiring and training practices, methods of  
8 doing business, policies and procedures, programs and agreements, and private  
9 information regarding Defendant's current and former agents, employees and  
10 customers, the disclosure of which may result in serious injury to Defendant's  
11 business. A "Trade Secret" means information, including a formula, pattern,  
12 compilation, program, device, method, technique, or process that: (1) derives  
13 independent economic value, actual or potential, from not being generally known to  
14 the public or to other persons who can obtain economic value from its disclosure or  
15 use; and (2) is the subject of efforts that are reasonable under the circumstances to  
16 maintain its secrecy. In addition, any Party may designate as "Confidential" any  
17 Material that is produced by any other Party or any third party that such Party  
18 believes in good faith contains Confidential Material as set forth above. Each Party  
19 shall have thirty (30) days from the actual receipt of any Material produced by any  
20 other Party or any third party to designate any such Material as "Confidential."  
21  
22  
23  
24  
25  
26  
27  
28 During this thirty (30)-day period, any person receiving any such Material shall

1 treat that Material as “Confidential” under the terms of this Order. Any Material  
2 designated as “Confidential” in accordance with this Order also will render  
3 “Confidential” any copies, excerpts, summaries or other documents reflecting or  
4 referring to the substance or contents of such Material.  
5

6 7. “Attorneys-Eyes Only Confidential” Material means Material that the  
7 Court ordered Defendant to produce on November 4, 2013 in a supplemental  
8 response to Plaintiff’s Interrogatory No. 1, including the names, addresses and  
9 telephone numbers of putative class members. (Docket No. 31). Such material also  
10 includes any highly confidential, sensitive material the disclosure of which to  
11 anyone other than Plaintiff’s attorneys could result in irreparable harm. By entering  
12 into this protective order, Plaintiff’s counsel agree that they will not disclose to  
13 Plaintiff or his agents (other than the undersigned counsel) the contact information  
14 of any current or former Maxim employees.  
15

16 8. Confidential Material shall be subject to the following restrictions:  
17

18 (a) Confidential Material shall not be given, shown, made available  
19 or communicated in any way to anyone except those Qualified Persons specified in  
20 sub-paragraphs (b) and (c) below to whom it is necessary that such Confidential  
21 Material be given or shown for the purposes permitted under Paragraph 2 above.  
22

23 (b) “Confidential” or “HIPAA Confidential” Material may be  
24 disclosed, for the purposes set forth in Paragraph 2 above, only to a “Qualified  
25 Person,” defined as follows:  
26  
27  
28

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

- (i) counsel of record for the Parties and attorneys, clerical, paralegal and other staff employed by such counsel who are assisting in the conduct of the Litigation;
- (ii) the Parties and those officers and employees of the Parties deemed necessary to aid counsel in the conduct of the Litigation, subject to Paragraph 9 below;
- (iii) witnesses (other than Parties) during any interview, deposition, hearing or informal meeting conducted by counsel for a Party subject to Paragraph 8 below;
- (iv) such consultants and experts retained by the Parties, or their respective counsel, as they, in good faith, deem necessary to provide assistance in connection with the conduct of the Litigation, subject to Paragraph 9 below;
- (v) the Court, court personnel, and jurors, subject to Paragraph 16 below;
- (vi) court reporters and their employees used in connection with the conduct of the Litigation;
- (vii) mediators and their employees used in connection with any efforts to mediate the Litigation;

1 (c) "Attorney-Eyes Only Confidential" Material may be disclosed,  
2 for the purposes set forth in Paragraph 2 above, only to a "Qualified Person,"  
3 defined as follows:  
4

5 (i) counsel of record for the Parties and attorneys, clerical,  
6 paralegal and other staff employed by such counsel who  
7 are assisting in the conduct of the Litigation;  
8

9 (ii) the Court, court personnel, and jurors, subject to  
10 Paragraph 16 below;  
11

12 (d) Confidential Material shall not be provided to counsel,  
13 consultants or expert witnesses employed by the Parties in any other litigation or  
14 administrative proceeding or used for any purposes other than investigating,  
15 preparing for, and conducting the Litigation, including any appeals thereof. If any  
16 such counsel, consultant or expert witness also is counsel, a consultant or an expert  
17 witness in the Litigation, such counsel, consultant or expert witness shall not use  
18 any Confidential Material in any other litigation or administrative proceeding.  
19

20  
21 9. Except for the Parties, those Qualified Persons described in  
22 subparagraphs 8(b)(ii) through 8(b)(iv) above to whom Confidential Material is  
23 disclosed shall first be provided with a copy of this Order and advised that such  
24 Confidential Material is being disclosed pursuant to and subject to the terms of this  
25 Order, and that Confidential Material may not be disclosed other than pursuant to  
26 the terms hereof. Qualified Persons to whom Confidential Material is disclosed  
27  
28



1 shall further execute the attached “Acknowledgment and Agreement to Be Bound”  
2 before such persons may be given access to Confidential Material. It shall be the  
3 responsibility of counsel providing such access to Confidential Material to provide  
4 each Qualified Person to whom Confidential Material is disclosed a copy of this  
5 Order and the attached “Acknowledgment and Agreement to Be Bound,” and to  
6 retain a signed copy in counsel’s files. Any Qualified Person to whom Confidential  
7 Material is provided pursuant to this Paragraph shall destroy such Confidential  
8 Material no later than sixty (60) days after the termination of the Litigation,  
9 including any appeals thereof, and provide written confirmation of the same.  
10  
11  
12

13       10. If a Party inadvertently discloses Confidential Material to anyone who  
14 is not a Qualified Person, such disclosure shall be reported in writing to the  
15 Producing Person who produced such inadvertently disclosed Confidential Material  
16 within five (5) business days of knowledge of such inadvertent production. In that  
17 event, counsel for the Party who made the inadvertent disclosure shall make all  
18 reasonable efforts to retrieve the Confidential Material and any documents  
19 containing such Confidential Material and to obtain the agreement of persons to  
20 whom inadvertent disclosure was made to treat the Confidential Material in  
21 accordance with the terms of this Order.  
22  
23  
24

25       11. All documents and things that are produced in the Litigation, whether  
26 voluntarily or as required under the Federal Rules of Civil Procedure, if such  
27 documents or things contain Confidential Material, shall bear a stamp stating  
28

1 “Confidential,” “Attorneys-Eyes Only Confidential” or “HIPAA Confidential,” on  
2 each page of any such document or on a sticker affixed to any such tangible thing,  
3 unless such designation would be unduly burdensome, in which case the  
4 designating party may designate the categories of documents that contain such  
5 material (*e.g.*, all email communications or all “flow sheets” for a Plaintiff). The  
6 parties agree that any documents contained therein which may contain HIPAA  
7 Confidential Material shall be redacted before filing with any Court pleading or  
8 filed under seal.

11  
12 12. Documents or testimony previously provided shall be retroactively  
13 designated by notice in writing of the appropriate confidentiality designation within  
14 sixty (60) days of the entry of this Order. Documents unintentionally produced  
15 without the applicable confidentiality designation may be retroactively designated  
16 in the same manner and shall be treated appropriately from the date written notice  
17 of the designation is provided to the receiving party. Documents to be inspected  
18 shall be treated as confidential during inspection. At the time of copying for the  
19 receiving party, such inspected document shall be stamped with the appropriate  
20 confidentiality designation by the producing party.

21  
22  
23  
24 13. (a) Upon written notice by the Producing Person within fifteen  
25 (15) business days of learning of the inadvertent or unintentional disclosure of  
26 attorney-client or work product Material, which Material will be specified by  
27 identifying the Bates number designations or such other information as to  
28

1 reasonably describe the Material, the Producing Person shall notify the Receiving  
2 Party that such Material was unintentionally disclosed. Such inadvertent or  
3 unintentional production, absent a further court order, shall not constitute a waiver  
4 of the attorney-client privilege or work-product immunity.  
5

6 (b) Thereafter, the Receiving Party shall return within five  
7  
8 (5) business days the originals and all copies of the Material specified in the  
9 aforesaid written notice, subject to Paragraph (c) below.

10 (c) If, however, the Receiving Party disagrees that the Material is  
11 protected from disclosure by the attorney-client privilege or work-product  
12 immunity, or asserts that there has been an intentional waiver of privilege or  
13 immunity which encompasses the Material, the Receiving Party may move the  
14 Court, within fifteen (15) business days of the Producing Person's written notice of  
15 inadvertent or unintentional disclosure, for an order that such Material be produced,  
16 in which case, the Party claiming the privilege or immunity shall have the burden of  
17 proving that such privilege or immunity exists. The Receiving Party shall not use  
18 or rely upon any such Material until after the resolution of any such motion by the  
19 Court.  
20

21 (d) If the Receiving Party fails to file the aforesaid motion in a  
22 timely fashion, then the Receiving Party, within five (5) business days after the  
23 time to file said motion has expired, will return the originals and all copies of the  
24 Materials that were not previously returned.  
25  
26  
27  
28

1 (e) Notwithstanding the foregoing procedure, the parties agree that  
2 with respect to voluminous electronically stored information (“ESI”) produced in  
3 electronic form (*e.g.*, all email communications of Plaintiff), the parties agree that  
4 pursuant to Federal Rule of Evidence 502(d), attorney-client privilege and work  
5 product protection shall not be waived pursuant to this Court-approved Order.  
6  
7  
8 Clawback of any attorney-client or work product documents from voluminous ESI  
9 productions shall take place in accordance with the time frames set forth in  
10 Paragraphs 13(a) and (b) above.

11  
12 14. In the event it becomes necessary at a deposition or hearing to show  
13 any Confidential Material to a witness, as described in sub-paragraph  
14 8(b)(iii) above, any testimony related to the Confidential Material shall be deemed  
15 to be Confidential Material, and the pages and lines of the transcript that set forth  
16 such testimony shall be stamped as set forth in Paragraph 11 of this Order.

17  
18 15. Testimony or exhibits disclosed at a deposition may be designated as  
19 Confidential Material by the person providing such testimony, by a Party or by a  
20 Producing Person, if such person either:

21  
22 (a) identifies on the record at the deposition those portions of the  
23 testimony or exhibits that are designated as Confidential Material, or  
24

25 (b) provides written notification to all Parties within thirty (30) days  
26 after receipt of the transcript as to those pages and lines of the transcript or exhibits  
27 that are designated as Confidential Material. The entire transcript of any deposition  
28

1 shall be treated as Confidential Material until thirty (30) days after the transcript is  
2 received. Each page of deposition transcript and exhibit designated as Confidential  
3 Material, and any copies thereof, shall be stamped, as set forth in Paragraph 11  
4 above, by the court reporter or counsel.  
5

6           16. No party may file an entire pleading under seal, but selected  
7 documents containing unredacted Confidential Material may be filed under seal  
8 with the prior permission of the Court. The Party seeking to file documents  
9 containing unredacted Confidential Material with the Court must move the Court  
10 for leave to file such documents under seal in accordance with the Local Rules and  
11 the Court’s Case Management Procedures. At the time of filing or any time  
12 thereafter, such material shall be placed in a sealed envelope, which shall be  
13 marked with the title of the action and shall state the following: “THIS  
14 ENVELOPE CONTAINS CONFIDENTIAL INFORMATION – SUBJECT TO  
15 PROTECTIVE ORDER.” The Party that files unredacted Confidential Information  
16 under seal shall, within five (5) business days of the filing, file a public version of  
17 the sealed document with the Confidential Material redacted.  
18  
19  
20  
21

22           17. Except for Class Member Information specified in Paragraph 7, no  
23 Party concedes that any Material designated by any other person as Confidential  
24 Material under any provision of this Order does, in fact, contain or reflect trade  
25 secrets, proprietary or confidential information or has been properly designated as  
26 Confidential Material, and entering into this Order shall not prejudice, in any way,  
27  
28

1 the right of a Party or an interested member of the public to seek at any time a  
2 determination by the Court of whether any particular Material should be subject to  
3 the terms of this Order. If the Court determines that any Material designated as  
4 Confidential Material is not Confidential, any receiving person may treat the  
5 Material without any restriction.  
6

7  
8 18. A Party shall not be obligated to challenge the propriety of the  
9 designation of Material as Confidential Material at the time made, and failure to do  
10 so shall not preclude a subsequent challenge thereof. In the event that any Party to  
11 this action disagrees at any stage of these proceedings with the designation by the  
12 designating party of any information as “Confidential Material” or the designation  
13 of any person as a “Qualified Person,” the parties shall first try to resolve such  
14 dispute in good faith on an informal basis, such as production of redacted copies. If  
15 the dispute cannot be resolved, the objecting party may invoke this protective Order  
16 by objecting in writing to the party who has designated the document or  
17 information as Confidential Material. The parties shall meet and confer regarding  
18 the written objection. The objecting party shall be required to move the Court for  
19 an Order challenging the designated status of such information within fifteen  
20 (15) business days of issuing the written objection, and failure to do so shall  
21 constitute a waiver of the objection. The parties may, by stipulation, provide for  
22 exceptions to this protective Order and any party may seek an order from the Court  
23 modifying this protective Order. Until the issue is resolved by the parties or the  
24  
25  
26  
27  
28

1 Court, “Confidential Material” “Attorneys-Eyes Only Confidential” and “HIPAA  
2 Confidential,” shall be treated as designated and shall not otherwise be disclosed.

3  
4 19. Should any non-party seek access to Confidential Material produced in  
5 the Litigation, by request, subpoena or otherwise, the Party or other recipient of the  
6 Confidential Material from whom such access is sought, as applicable, shall  
7 promptly notify the Producing Person who produced such Confidential Material of  
8 such requested access. If any Receiving Party (a) is subpoenaed in another action,  
9 or (b) is served with a demand in another action to which he, she, or it is a party, or  
10 (c) is served with any other legal process by one not a Party to this Litigation  
11 seeking Confidential Material which was produced, the Receiving Party shall give  
12 actual written notice, by hand, electronic mail, or facsimile transmission, within  
13 five (5) business days of receipt of such subpoena, demand or legal process, to  
14 those who produced or designated the Material. The Receiving Party shall not  
15 produce any of the Producing Person’s Confidential Material, unless ordered by a  
16 court to do so, until the later of (i) the date of production specified in, or required  
17 by, the subpoena, demand or other legal process or (ii) the date that any objection  
18 by the Producing Party to production of the Confidential Material is resolved by the  
19 Court. The Producing Person shall be solely responsible for asserting any objection  
20 to the requested production.

21  
22  
23  
24  
25  
26  
27 20. HIPAA Confidential Material shall be subject to the following  
28 additional restrictions:

1 (a) PHI as defined by the Privacy Rule, *see* 45 C.F.R. §160.103,  
2 which includes individually identifying health information about any of Maxim's  
3 current or former clients that directly or indirectly identifies an individual,  
4 including, but not limited to, the full name of the client, the residential address of  
5 the client, any type of contact information of the client (including but not limited to  
6 phone numbers, email addresses or mailing addresses), the names or contact  
7 information of the client's family members, the social security number of the client,  
8 and all medical records or other medical information related to the client, shall be  
9 HIPAA Confidential Material.  
10  
11

12 (b) Any declaration filed by the parties in this action shall not  
13 disclose any HIPAA Confidential Material. Any current or former Maxim client  
14 shall be identified in such declarations filed in the Court by a fictitious name only.  
15 Plaintiff's counsel shall provide to Maxim's counsel the real first name and last  
16 initial of the client upon filing of the declaration.  
17  
18

19 (c) No documents that contain HIPAA Confidential Material shall  
20 be filed with the Court, unless the PHI and other identifying information (as set  
21 forth Paragraph 20(a) above) is redacted or the documents are filed under seal.  
22  
23

24 (d) Plaintiff, Plaintiff's Counsel, and putative class members will  
25 not contact any client of Maxim to whom Maxim is providing healthcare services  
26 unless a separate Court Order is issued approving such communications. Maxim  
27 reserves the right to object to any such communications.  
28



1 (e) With respect to any external employees of Maxim who are  
2 providing healthcare services to Maxim's clients, Plaintiff's Counsel may contact  
3 any current or former external employees disclosed by Maxim in its discovery  
4 responses regarding the subject matter of this litigation. Plaintiff' counsel agrees to  
5 read the Prefatory Statement attached to this Order prior to beginning any interview  
6 which shall advise the external employee not to disclose any HIPAA-protected  
7 information and not to disclose other Confidential Business Information of Maxim  
8 unless such information relates to the external employee's personal knowledge of  
9 Home Health Aide's job duties.  
10

11  
12 (f) Any HIPAA Confidential Material disclosed in this Litigation  
13 shall be used solely for purpose of this Litigation, and unless the Court rules  
14 otherwise, such information shall not be disclosed to any person other than the  
15 Qualified Persons listed in Paragraph 8(b) of this Order. All such HIPAA material  
16 shall be returned or destroyed at the conclusion of this litigation pursuant to  
17 Paragraph 25.  
18  
19  
20

21 21. Nothing in this Order constitutes or may be interpreted as a waiver by  
22 any party of the attorney-client privilege, attorney work product protection, or any  
23 other privilege.  
24

25 22. Any dispute including any effort to contest the designation of  
26 Confidential Material, shall be resolved by motion before the Court upon not less  
27 than fifteen (15) business days' written notice, or such other notice period as the  
28

1 Court may Order to the Parties and the person who produced the Confidential  
2 Material at issue.

3  
4 23. Prior to the use of any Confidential Material at any hearing to be held  
5 in open court, counsel who desires to so use such Confidential Material shall take  
6 reasonable steps to preserve the confidentiality of the material and to submit a  
7 motion to file under seal at or immediately following the hearing for the portion of  
8 the record and/or any exhibits that contain Confidential Material.

9  
10 24. This Order shall continue to be binding throughout and after the  
11 conclusion of the Litigation, including any appeals.

12  
13 25. Within sixty (60) days after the conclusion of the Litigation, including  
14 all appeals, all Confidential Material, and all copies thereof, shall be destroyed.  
15 Counsel for the applicable Parties shall certify, in writing, that all such Confidential  
16 Material within their possession or control has been destroyed. Notwithstanding  
17 the foregoing, counsel for the Parties may retain pleadings, other papers filed with  
18 the Court or served in the course of the Litigation, interrogatories and responses,  
19 requests for production and the responses thereto, deposition transcripts and work  
20 product, subject to the limitations concerning their use stated herein. This  
21 Paragraph shall not apply to Confidential Material filed with and in the possession

22  
23  
24  
25 ///

26  
27  
28 ///

1 of the Court, which strictly and fully enforces Local Rule 26.2(g) concerning the  
2 disposition of restricted documents.  
3

4 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED:**

5 **December 27, 2013**

6 *Carla M. Woehrle*

7  
8 By

Hon. Carla M. Woehrle  
U.S. Magistrate Judge

9  
10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28