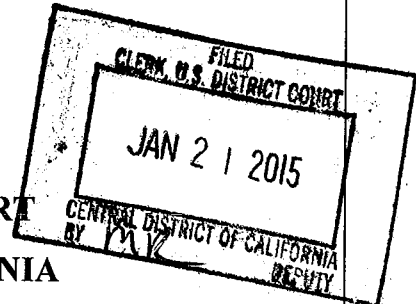


1 Wayne A. Mack (*Pro Hac Vice*)
 2 C. Mitchell Goldman (*Pro Hac Vice*)
 3 DUANE MORRIS LLP
 4 30 South 17th Street
 5 Philadelphia, PA 19103-4196
 6 Telephone: (215) 979-1152
 7 Facsimile: (215) 689-3595
 8 E-mail: wamack@duanemorris.com
 9 E-mail: cmgoldman@duanemorris.com
 10
 11 Cyndie M. Chang (SBN 227542)
 12 Audra L. Thompson (SBN 218479)
 13 DUANE MORRIS LLP
 14 865 S. Figueroa St., Suite 3100
 15 Los Angeles, CA 90017-5450
 16 Telephone: (213) 689-7400
 17 Facsimile: (213) 689-7401
 18 E-mail: cmchang@duanemorris.com
 19 E-mail: athompson@duanemorris.com
 20 Attorneys for Plaintiff Signature MD, Inc.

HOLLAND & Knight LLP
 Richard T. Williams (Bar # 052896)
 400 S. Hope Street, 8th Floor
 Los Angeles, CA 90007-2040
 Telephone: (213) 896-2400
 Facsimile: (213-896-2450
 Email: richard.williams@hklaw.com
 HOLLAND & KNIGHT LLP
 Jerome W. Hoffman (*Pro Hac Vice*)
 315 South Calhoun Street, Suite 600
 Tallahassee, FL 32301
 Telephone: (850) 224-7000
 Facsimile: (850) 224-8832
 Email: jerome.hoffman@hklaw.com
 Attorneys for Defendant MDVIP, INC.



11
 12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

15 SIGNATURE MD, INC.,
 16 Plaintiff,
 17 v.
 18 MDVIP, INC.
 19 Defendant.

Case No.: 2:14-cv-5453-DMG(SS X)
 Assigned to Hon. Dolly M. Gee
STIPULATED [PROPOSED]
PROTECTIVE ORDER

23 1. PURPOSES AND LIMITATIONS

24 1.1 Disclosure and discovery activity in this action are likely to involve
 25 confidential, proprietary, or private information for which special protection from
 26 disclosure and from use for any purpose other than prosecuting this litigation may
 27 Accordingly, the parties hereby stipulate to and petition the court to enter Protective
 28 Order ("Order").

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation
3 of information or items under this Stipulated Protective Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c), including without limitation:
7 (1) information protected pursuant to Federal Rule of Civil Procedure 5.2;
8 (2) information protected by any federal, California, or other privacy statute, such as
9 the California Right to Financial Privacy Act; and (3) information protected by an
10 existing contractual obligation requiring the Designating Party to maintain the
11 confidentiality of the information. Nothing in this paragraph shall preclude a Party
12 from redacting personal information, including social security numbers or dates of
13 birth, as required by governing law or contract.

14 2.3 “CONFIDENTIAL -ATTORNEYS’ EYES ONLY” Information or
15 Items: extremely sensitive “Confidential Information or Items,” production of which
16 on a ‘CONFIDENTIAL” basis to another Party would create a substantial risk of
17 serious harm that could not be avoided by less restrictive means. Attorneys’ Eyes
18 Only Information or Items shall be considered a subset of Confidential Information or
19 Items under this order.

20 2.4 Counsel (without qualifier): Outside Counsel of Record and House
21 Counsel, as well as their support staff, including but not limited to attorneys,
22 paralegals, secretaries, law clerks, and investigators.

23 2.5 Designating Party: a Party or Non-Party that designates information
24 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
25 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.”

26 2.6 Disclosure or Discovery Material: all items or information, including
27 from any non-party, regardless of the medium or manner in which it is generated,
28 stored, or maintained (including, among other things, testimony, transcripts, and

1 tangible things), that are produced or generated in disclosures or responses to
2 discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation, along with his or her employees and support personnel,
5 who has been retained by a Party or its Counsel to serve as an expert witness or as a
6 consultant in this action.

7 2.8 House Counsel: attorneys who are employees of a Party to this action.
8 House Counsel does not include Outside Counsel of Record or any other outside
9 counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association, or
11 other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: attorneys, as well as their support staff
13 (including but not limited to paralegals, secretaries, law clerks, and investigators)
14 who are not employees of a Party to this action but are retained by a Party to
15 represent or advise a party to this action and (1) have appeared in this action on
16 behalf of that party, or (2) are affiliated with a law firm which has appeared on behalf
17 of that Party.

18 2.11 Party: any party to this action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs).

21 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this action.

23 2.13 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27
28

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL” or “CONFIDENTIAL ATTORNEYS’ EYES
3 ONLY.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6 3. SCOPE

7 3.1 The protections conferred by this Stipulation and Order cover not only
8 Protected Material (as defined above), but also (a) any information copied or
9 extracted from Protected Material; (b) all copies, excerpts, summaries, or
10 compilations of Protected Material; and (c) any testimony, conversations, or
11 presentations by Parties or their Counsel that might reveal Protected Material.

12 However, the protections conferred by this Stipulation and Order do not cover
13 the following information: (i) any information that is in the public domain at the time
14 of disclosure to a Receiving Party or becomes part of the public domain after its
15 disclosure to a Receiving Party as a result of publication not involving a violation of
16 this Order, including becoming part of the public record through trial or otherwise;
17 (ii) any information known to the Receiving Party prior to the disclosure or obtained
18 by the Receiving Party after the disclosure from a source who obtained the
19 information lawfully and under no obligation of confidentiality to the Designating
20 Party; and (iii) any information obtained outside of litigation with the consent of the
21 Producing Party. Any use of Protected Material at trial shall be governed by a
22 separate agreement or order.

23 3.2 Nothing in this Stipulated Protective Order shall prevent or restrict a
24 Producing Party’s own disclosure or use of its own Protected Material for any
25 purpose.

26 3.3 Nothing in this Stipulated Protective Order shall be construed to
27 prejudice any Party’s right to use any Protected Material in court or in any court
28 filing with the written consent of the Designating Party or by order of the Court.

1 3.4 This Stipulated Protective Order is without prejudice to the right of any
2 Party to seek further or additional protection of any Discovery Material or to modify
3 this Stipulated Protective Order in any way, including, without limitation, an order
4 that certain matter not be produced at all.

5 3.5 Nothing in this Stipulated Protective Order shall be construed to prevent
6 Counsel from advising their clients with respect to this case based in whole or in part
7 upon Protected Materials, provided counsel does not disclose the Protected Material
8 itself except as provided in this Order.

9 4. DURATION

10 4.1 Even after final disposition of this litigation, the confidentiality
11 obligations imposed by this Stipulated Protective Order shall remain in effect until a
12 Designating Party agrees otherwise in writing or a court order otherwise directs. Final
13 Disposition shall be deemed to be the later of (1) dismissal of all claims and defenses
14 in this action, with or without prejudice; and (2) final judgment herein after the
15 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of
16 this action, including the time limits for filing any motions or applications for
17 extension of time pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.
20 Each Party or Non-Party that designates information or items for protection under
21 this Stipulated Protective Order must take care to limit any such designation to
22 specific material that qualifies under this Stipulated Protective Order. If only a
23 portion or portions of material, documents, items, or oral or written communications
24 qualify under this Stipulated Protective Order, the Designating Party, to the extent
25 practicable, shall designate only the portion or portions for protection -so that other
26 portions of the material, documents, items, or communications for which protection is
27 not warranted are not swept unjustifiably within the ambit of this Stipulated
28 Protective Order.

1 5.2 Mass or indiscriminate designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
3 to unnecessarily encumber or retard the case development process or to impose
4 unnecessary expenses and burdens on other parties) expose the Designating Party to
5 sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection at all or do not qualify for the
8 level of protection initially asserted, that Designating Party must within a reasonable
9 time notify all other parties that it is withdrawing the mistaken designation.

10 5.3 Manner and Timing of Designations. Except as otherwise provided in
11 this Order (see, e.g., section 5.4(a) and 5.4(b) below), or as otherwise stipulated or
12 ordered, Disclosure or Discovery Material that qualifies for protection under this
13 Stipulated Protective Order must be clearly so designated before the material is
14 disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic
17 documents, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
19 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" to each page that contains
20 protected material. A Party or Non-Party that makes original documents or materials
21 available for inspection need not designate them for protection until after the
22 inspecting Party has indicated which material it would like copied and produced.
23 During the inspection and before the designation, all of the material made available
24 for inspection shall be deemed "CONFIDENTIAL -ATTORNEYS' EYES ONLY."
25 After the inspecting Party has identified the documents it wants copied and produced,
26 the Producing Party must determine which documents, or portions thereof, qualify for
27 protection under this Stipulated Protective Order. Then, before producing the
28 specified documents, the Producing Party must affix the "CONFIDENTIAL" or

1 “CONFIDENTIAL -ATTORNEYS’ EYES ONLY” legend to each page that contains
2 Protected Material. If only a portion or portions of the material on a page qualifies for
3 protection, the Producing Party to the extent practicable shall identify the protected
4 portion(s) and specify the level of protection being asserted.

5 (b) for testimony given in deposition, any party or testifying persons
6 or entities may designate any portion of the testimony or exhibits
7 “CONFIDENTIAL” or “CONFIDENTIAL -ATTORNEYS’ EYES ONLY” either on
8 the record before the close of the deposition or in writing on or before the later of ten
9 (10) days after receipt of the final transcript Only those portions of the testimony that
10 are designated for protection shall be covered by the provisions of this Stipulated
11 Protective Order. If any portion of a videotaped deposition is designated, the original
12 and all copies of any videocassette, videotape, DVD or other media container shall be
13 labeled with the appropriate legend. Pending designation as set forth above, the entire
14 transcript, including exhibits, shall be deemed “CONFIDENTIAL,” unless exhibits or
15 testimony are identified on the record during the deposition as “CONFIDENTIAL -
16 ATTORNEYS’ EYES ONLY,” in which case the entire transcript, including exhibits
17 shall be deemed “CONFIDENTIAL -ATTORNEYS’ EYES ONLY” information. If
18 no designation is made within the time period above, the transcript shall be
19 considered not to contain any “CONFIDENTIAL” or “CONFIDENTIAL -
20 ATTORNEYS’ EYES ONLY” information.

21 Transcript pages containing Protected Material must be separately bound by
22 the court reporter, who must affix to each such page the legend “CONFIDENTIAL”
23 or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as instructed by the
24 Designating Party.

25 Any Protected Material that is used in the taking of a deposition shall remain
26 subject to the provisions of this Stipulated Protective Order, along with the transcript
27 pages and videotape of the deposition testimony dealing with such Protected
28 Material. Counsel for any Producing Party shall have the right to exclude from oral

1 depositions, other than the deponent and deponent's counsel any person who is not
2 authorized by this Stipulated Protective Order to receive or access Protected Material
3 based on the designation of such Protected Material. Such right of exclusion shall be
4 applicable only during periods of examination or testimony regarding such Protected
5 Material.

6 (c) for all other information or tangible items, that the Producing
7 Party affix in a prominent place on the exterior of the container or containers in
8 which the information or item is stored the legend "CONFIDENTIAL" or
9 "CONFIDENTIAL -ATTORNEYS' EYES ONLY." If only a portion or portions of
10 the information or item warrant protection, the Producing Party, to the extent
11 practicable, shall identify the protected portion(s) and specify the level of protection
12 being asserted.

13 5.4 Inadvertent Failures to Designate. If a Producing Party discovers that
14 "CONFIDENTIAL" or "CONFIDENTIAL -ATTORNEYS' EYES ONLY"
15 information or items that it produced was not designated as Protected Material, or
16 that it produced information or items that were designated as Protected Material but
17 had designated it in the incorrect category, the Producing Party may notify all other
18 Parties of the error and identify the affected information or items and their new
19 designation or re-designation. Thereafter, the information or items so designated or
20 re-designated will be treated as Protected Material. After providing such notice, the
21 Producing Party shall provide re-labeled copies of the information or items to each
22 Receiving Party reflecting the change in designation.

23 An inadvertent failure to designate qualified information or items does not,
24 standing alone, waive the Designating Party's right to secure protection under this
25 Stipulated Protective Order for such material. Upon correction of a designation, the
26 Receiving Party must make reasonable efforts to assure that the material is treated in
27 accordance with the provisions of this Stipulated Protective Order. Upon receiving
28 the Protected Material with the correct confidentiality designation, the Receiving

1 Parties shall return or securely destroy, at the Receiving Parties' option, all Discovery
2 Material reasonably accessible to the Receiving Party that was not designated
3 properly. Unauthorized or inadvertent disclosure does not change the status of
4 Discovery Material or waive the right to hold the disclosed document or information
5 as Protected Material.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time. A Party does not waive its right to
9 challenge a confidentiality designation by not challenging a designation promptly
10 after the original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate a designation of
12 confidentiality challenge by providing written notice of each designation it is
13 challenging and describing the basis for each challenge. To avoid ambiguity as to
14 whether a challenge has been made, the written notice must recite that the challenge
15 to confidentiality is being made in accordance with this specific paragraph of the
16 Stipulated Protective Order. The parties shall attempt to resolve each challenge in
17 good faith and must begin the process by conferring directly (in voice to voice
18 dialogue; other forms of communication are not sufficient) within ten (10) days of the
19 date of service of the written notice. In conferring, the Challenging Party must
20 explain the basis for its belief that the confidentiality designation was not proper and
21 must give the Designating Party a reasonable opportunity to review the designated
22 material, to reconsider the circumstances, and, if no change in designation is offered,
23 to explain the basis for the chosen designation.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
25 court intervention, the Designating Party shall file and serve a motion to retain
26 confidentiality under Civil Local Rules 37-1 through 37-4 (and in compliance with
27 Judge Gee's Procedures for Filing Documents Under Seal) within thirty (30) days of
28 the initial notice of challenge or within ten (10) days of the parties agreeing that the

1 meet and confer process will not resolve their dispute, whichever is earlier. Each such
2 motion must be accompanied by a competent declaration affirming that the movant
3 has complied with the meet and confer requirements imposed in the preceding
4 paragraph. Failure by the Designating Party to make such a motion including the
5 required declaration within the applicable deadlines above shall automatically waive
6 the confidentiality designation for each such challenged designation. The parties may
7 stipulate without court order to amend the time period within which a motion shall be
8 filed. In addition, the Challenging Party may file a motion challenging a
9 confidentiality designation at any time if there is good cause for doing so, including a
10 challenge to the designation of a deposition transcript or any portions thereof. Any
11 motion brought pursuant to this provision must be accompanied by a competent
12 declaration affirming that the movant has complied with the meet and confer
13 requirements imposed by the preceding paragraph.

14 6.4 The burden of persuasion in any such challenge proceeding shall be on
15 the Designating Party. Frivolous challenges and those made for an improper purpose
16 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
17 expose the Challenging Party to sanctions. Unless the Designating Party has waived
18 the confidentiality designation by failing to file a motion to retain confidentiality as
19 described above, all parties shall continue to afford the material in question the level
20 of protection to which it is entitled under the Producing Party's designation until the
21 court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this
25 case only for prosecuting, defending, or attempting to settle this litigation or related
26 appellate proceeding, and not for any other purpose whatsoever. Such Protected
27 Material may be disclosed only to the categories of persons and under the conditions
28 described in this Stipulated Protective Order. When the litigation has been

1 terminated, a Receiving Party must comply with the provisions of section 13 below
2 (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a
4 location and in a secure manner that ensures that access is limited to the persons
5 authorized under this Stipulated Protective Order.

6 7.2 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 information or item designated
9 "CONFIDENTIAL" only to:

10 (a) the Receiving Party's Outside Counsel of Record in this action,
11 including attorneys who are principals of, employed by, or working for said Outside
12 Counsel of Record who have signed the "Acknowledgment and Agreement to Be
13 Bound" that is attached hereto as Exhibit A, as well as non-attorney employees and
14 contractors of said Outside Counsel of Record to whom it is reasonably necessary to
15 disclose the information for this litigation;

16 (b) current or former officers, directors, and current employees
17 (including House Counsel) of the Receiving Party, to whom disclosure is reasonably
18 necessary for this litigation, and who have signed the "Acknowledgment and
19 Agreement to Be Bound" (Exhibit A), as well as their immediate paralegals and staff;

20 (c) Experts (as defined in this Stipulated Protective Order) retained by
21 the Receiving Party to assist in this action, provided that disclosure is only to the
22 extent reasonably necessary to perform such work and provided that (i) such Expert
23 has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and (ii)
24 such Expert is not a current officer, director, or employee of a Party or of a
25 competitor of a Party, nor is anticipated at the time of retention to become an officer,
26 director, or employee of a Party or of a competitor of a Party;

27 (d) the court and its personnel;

28

1 (e) court reporters, stenographers, and videographers retained to
2 record testimony in this action and their staff, professional jury or trial consultants,
3 and Professional Vendors to whom disclosure is reasonably necessary for this
4 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
5 (Exhibit A);

6 (f) during their testimony or preparation for their testimony,
7 witnesses in the action to whom disclosure is reasonably necessary. Such witnesses
8 who are employed by the parties shall be bound by the terms of this Stipulated
9 Protective Order and shall be given a copy of it at the outset of a deposition. Any
10 such witness who is not employed by a party shall be required to sign the
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A). Pages of transcribed
12 deposition testimony or exhibits to depositions that reveal Protected Material must be
13 separately bound by the court reporter and may not be disclosed to anyone except as
14 permitted under this Stipulated Protective Order.

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

17 (h) mock jurors who have signed the "Acknowledgement and
18 Agreement to Be Bound" (Exhibit A);

19 (i) any mediator who is assigned to hear this matter, and his or her
20 staff, who have signed the "Acknowledgement and Agreement to Be Bound"
21 (Exhibit A);

22 (j) any other person with the prior written consent of the Producing
23 Party.

24 7.3 Disclosure of "CONFIDENTIAL -ATTORNEYS' EYES ONLY"
25 Information or Items. Unless otherwise ordered by the court or permitted in writing
26 by the Designating Party, a Receiving Party may disclose any information or item
27 designated "CONFIDENTIAL -ATTORNEYS' EYES ONLY" only to the following:

28 (a) Persons designated in Paragraphs 7.2 (d), (e), (g), (h) and (i);

1 (b) during their testimony, witnesses in the action to whom disclosure
2 is reasonably necessary. Such witnesses who are employed by the parties shall be
3 bound by the terms of this Stipulated Protective Order and shall be given a copy of it
4 at the outset of a deposition. Any such witness who is not employed by a party shall
5 be required to sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A).
6 Pages of transcribed deposition testimony or exhibits to depositions that reveal
7 Protected Material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this Stipulated Protective Order.

9 (c) the Receiving Party's Outside Counsel of Record in this action,
10 including attorneys who are principals of, employed by, or working for said Outside
11 Counsel of Record, provided that such Outside Counsel is not involved in
12 competitive decision-making, as defined by *US. Steel v. United States*, 730 F.2d
13 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a competitor of a Party, to
14 whom it is reasonably necessary to disclose the information for this litigation and
15 who have signed the "Acknowledgement and Agreement to Be Bound" that is
16 attached hereto as Exhibit A, as well as non-attorney employees of said Outside
17 Counsel of Record to whom it is reasonably necessary to disclose the information for
18 this litigation;

19 (d) no more than three (3) House Counsel of the Receiving Party,
20 provided that such House Counsel is not involved in competitive decision-making, as
21 defined by *US. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on
22 behalf of a Party or a competitor of a Party, to whom disclosure is reasonably
23 necessary for this case, who are permitted by the Producing Party to have access to
24 such materials, and as well as their immediate paralegals and staff who have signed
25 the "Acknowledgement and Agreement to Be Bound" that is attached hereto as
26 Exhibit A,;

27 (e) Experts (as defined in this Order) retained by the Receiving Party
28 to assist in this action, provided that disclosure is only to the extent reasonably

1 necessary to perform such work, and provided that (i) such Expert is not a current
2 officer, director, or employee of a Party or of a competitor of a Party, nor anticipated
3 at the time of retention to become an officer, director, or employee of a Party or of a
4 competitor to a Party; (ii) such Expert is not involved in competitive decision-
5 making, as defined by *US. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir.
6 1984) on behalf of a Party or a competitor of a Party; and (iii) such Expert has signed
7 the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

8 Such Experts shall not be permitted to provide advice, analysis, or
9 recommendations to a competitor of the Designating Party that concern the matters at
10 issue in the above-entitled litigation, while the above-entitled litigation is pending,
11 absent consent of the Designating Party. Consent of the Designating Party shall not
12 be withheld absent compelling ground. Experts are hereby specifically advised that
13 their written work product which contains or discloses the substance of
14 "CONFIDENTIAL -ATTORNEYS' EYES ONLY" information is subject to all the
15 provisions of this Stipulated Protective Order. Outside Counsel of Record disclosing
16 "CONFIDENTIAL" and "CONFIDENTIAL-ATTORNEYS' EYES ONLY"
17 information to Experts shall be responsible for obtaining the executed undertakings in
18 advance of such disclosure and also shall retain the original executed copy of said
19 undertaking; and

20 (f) any other person with the prior written consent of the Producing
21 Party.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
23 OTHER LITIGATION OR GOVERNMENT INVESTIGATION

24 8.1 If a Party is served with a document request, investigatory demand for
25 documents, subpoena or a court order ("Document Demand") issued in other
26 litigation or government investigation that compels disclosure of any information or
27 items designated in this action as "CONFIDENTIAL" or "CONFIDENTIAL -
28 ATTORNEYS' EYES ONLY," that Party must:

1 (a) within three (3) business days notify in writing the Designating
2 Party;

3 (b) promptly notify in writing the party who caused the Document
4 Demand to issue in the other litigation that some or all of the material covered by the
5 Document Demand is subject to this Stipulated Protective Order. Such notification
6 shall include a copy of this Stipulated Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be
8 pursued by the Designating Party whose Protected Material may be affected. If the
9 Designating Party timely seeks a protective order, the Party served with the
10 Document Demand shall not produce any information designated in this action as
11 "CONFIDENTIAL" or "CONFIDENTIAL -ATTORNEYS' EYES ONLY" before a
12 determination by the court from which the subpoena or order issued, unless the Party
13 has obtained the Designating Party's permission. The Designating Party shall bear the
14 burden and expense of seeking protection in that court of its Protected Material.

15 (d) Nothing in these provisions should be construed as authorizing or
16 requiring a Receiving Party in this action to disobey a lawful order of any court.

17 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 9.1 The terms of this Stipulated Protective Order are applicable to
20 information produced by a Non-Party in this action and designated as
21 "CONFIDENTIAL" or "CONFIDENTIAL -ATTORNEYS' EYES ONLY." Such
22 information produced by Non-Parties in connection with this litigation is protected by
23 the remedies and relief provided by this Stipulated Protective Order. Nothing in these
24 provisions should be construed as prohibiting a Non-Party from seeking additional
25 protections.

26 9.2 In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party's confidential information in its possession or control, and the
28

1 Party is subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 (a) notify in writing the Requesting Party and the Non-Party that
4 some or all of the information requested is subject to a confidentiality agreement with
5 a Nonparty;

6 (b) provide the Non-Party with a copy of the Stipulated Protective
7 Order in this litigation, and the relevant discovery request(s).

8 9.3 If the Non-Party fails to seek a protective order from this court within
9 ten (10) days of receiving the notice and accompanying information, the Receiving
10 Party may produce the Non-Party's confidential information responsive to the
11 discovery request. If the Non-Party timely seeks a protective order, the Receiving
12 Party shall not produce any information in its possession or control that is subject to
13 the confidentiality agreement with the Non-Party before a determination by the
14 court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and
15 expense of seeking protection in this court of its Protected Material.

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 10.1 If a Receiving Party learns that, by inadvertence or otherwise, it has
18 disclosed Protected Material to any person or in any circumstance not authorized
19 under this Stipulated Protective Order, the Receiving Party must immediately (a)
20 notify in writing the Designating Party of the unauthorized disclosures; (b) use its
21 best efforts to retrieve all unauthorized copies of the Protected Material; (c) inform
22 the person or persons to whom unauthorized disclosures were made of all the terms
23 of this Stipulated Protective Order; and (d) request such person or persons to execute
24 the "Acknowledgment and Agreement to Be Bound" that is attached hereto as
25 Exhibit A.

26
27
28 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party
and to afford the Non-Party an opportunity to protect its confidentiality.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 11.1 If information subject to a claim of attorney-client privilege, work
4 product protection or other privilege or protection is inadvertently produced, such
5 production shall not constitute automatic waiver of such privilege or protection
6 pursuant to Federal Rules of Evidence 502. When a Producing Party gives notice to
7 Receiving Parties that certain inadvertently produced material is subject to a claim of
8 privilege or other protection, the Receiving Party's treatment of such material shall be
9 in accordance with Federal Rule of Civil Procedure 26(b)(5)(B), provided that such
10 materials shall be returned by the Receiving Party within five (5) business days of
11 any written request for the return of such materials. If the Receiving Party seeks to
12 challenge the privileged or otherwise protected nature of the materials, the receiving
13 party must still return the materials to the Producing Party, but may then file a motion
14 to seek re-production of the materials and the Producing Party shall make the
15 materials at issue available to the court for in camera inspection if so ordered.

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order
18 abridges the right of any person to seek its modification by the court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this
20 Stipulated Protective Order no Party waives any right it otherwise would have to
21 object to disclosing or producing any information or item on any ground not
22 addressed in this Stipulated Protective Order. Similarly, no Party waives any right to
23 object on any ground to use in evidence of any of the material covered by this
24 Stipulated Protective Order.

25 12.3 Filing Protected Material. Without written permission from the
26 Designating Party or a court order secured after appropriate notice to all interested
27 persons, a Party may not file in the public record in this action any Protected
28 Material. A Party that seeks to file under seal any Protected Material must comply
with Civil Local Rule 79-5.

1 12.4 Termination of Matter and Retention of Jurisdiction. The Parties agree
2 that the terms of this Stipulated Protective Order shall survive and remain in effect
3 after the Final Disposition of the above-captioned matter. The Court shall retain
4 jurisdiction after Final Disposition of this matter to hear and resolve any disputes
5 arising out of this Stipulated Protective Order.

6 12.5 Successors. This Stipulated Protective Order shall be binding upon the
7 Parties hereto, their attorneys, and their successors, executors, personal
8 representatives, administrators, legal representatives, assigns, subsidiaries, divisions,
9 employees, agents, retained consultants and experts, and any persons or organizations
10 over which they have direct control.

11 12.6 Burdens of Proof. Notwithstanding anything to the contrary above,
12 nothing in this Stipulated Protective Order shall be construed to change the burdens
13 of proof or legal standards applicable in disputes regarding whether particular
14 Discovery Material is confidential, which level of confidentiality is appropriate,
15 whether disclosure should be restricted, and if so, what restrictions should apply.

16 12.7 Modification by Court. This Stipulated Protective Order is subject to
17 further court order based upon public policy or other considerations, and the Court
18 may modify this Stipulated Protective Order sua sponte in the interests of justice. The
19 United States District Court for the Central District of California is responsible for
20 the interpretation and enforcement of this Stipulated Protective Order. All disputes
21 concerning Protected Material, however designated, produced under the protection of
22 this Stipulated Protective Order shall be resolved by the United States District Court
23 for the Central District of California.

24 12.8 Discovery Rules Remain Unchanged. Identification of any individual
25 pursuant to this Stipulated Protective Order does not make that individual available
26 for deposition or any other form of discovery outside of the restrictions and
27 procedures of the Federal Rules of Civil Procedure, the Local Rules for the United
28 States District Court for the Central District of California, or the Court's own orders.

1 13. FINAL DISPOSITION.

2 13.1 Within 60 days after the final disposition of this action, as defined in
3 Section 4, each Receiving Party must return all Protected Material to the Producing
4 Party or destroy such material. As used in this subdivision, "all Protected Material"
5 includes all copies, abstracts, compilations, summaries, and any other format
6 reproducing or capturing any of the Protected Material. Whether the Protected
7 Material is returned or destroyed, the Receiving Party must submit a written
8 certification to the Producing Party (and, if not the same person or entity, to the
9 Designating Party) by the 60 day deadline that (a) identifies (by category, where
10 appropriate) all the Protected Material that was returned or destroyed; and (b) affirms
11 that the Receiving Party has not retained any copies, abstracts, compilations,
12 summaries or any other format reproducing or capturing any of the Protected
13 Material. Notwithstanding this provision, the Parties are not required to delete
14 information that may reside on their respective electronic back-up systems that are
15 over-written in the normal course of business. Notwithstanding the foregoing,
16 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
18 trial exhibits, expert reports, attorney work product, and consultant and expert work
19 product, even if such materials contain Protected Material. Any such archival copies
20 that contain or constitute Protected Material remain subject to this Stipulated
21 Protective Order as set forth in Section 4.

22 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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Dated: January 15, 2015

DUANE MORRIS LLP

By: /s/ Audra L. Thompson

Attorneys for Plaintiff SIGNATURE MD, Inc.

Dated: January 15, 2015

HOLLAND & KNIGHT LLP

By: /s/ Richard T. Williams

Attorneys for Defendant MDVIP INC.

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PROOF OF SERVICE

State of California)
County of Los Angeles) ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 400 South Hope Street, 8th Floor, Los Angeles, California 90071.

On **January 15, 2015**, I served the document described as **STIPULATED [PROPOSED] PROTECTIVE ORDER** on the interested parties in this action:

Wayne A. Mack
C. Mitchell Goldman
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103-4196
(215) 979-1152
wamack@duanemorris.com
emcgoldman@duanemorris.com
Attorneys for Plaintiff Signature
MD, Inc.

Cyndie M. Chang
Audra L. Thompson
DUANE MORRIS LLP
865 S. Figueroa Street, Suite 3100
Los Angeles, CA 90017-5450
(213) 689-7400
cmchang@duanemorris.com
athompson@duanemorris.com

[x] By Electronic Transfer to the CM/ECF System

In accordance with Federal Rules of Civil Procedure 5(d) (3), Local Rule 5-4, and General Order 07-08, I uploaded via electronic transfer a true and correct copy scanned into an electronic file in Adobe "pdf" format of the above-listed documents to the United States District Court Central District of California' Case Management and Electronic Case Filing (CM/ECF) system on this date. It is my understanding that by transmitting these documents to the CM/ECF system, they will be served on all parties of record according to the preferences chosen by those parties within the CM/ECF system. The transmission was reported as complete and without error.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed on **January 15, 2015**, at Los Angeles, California.



Ericka Mendez