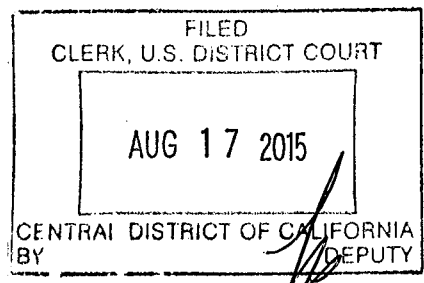


Case 2:15-cv-00112-MWF-E

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TERAPEAK INC.



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BARRY ROSEN,

Plaintiff,

v.

TERAPEAK INC., WORTHPOINT
CORPORATION, PREMIER
AUCTIONS, LLC, and DOES 1 through
10, inclusive,

Defendants.

Case No.: 2:15-cv-00112-MWF-E

Hon. Judge Michael W. Fitzgerald

**AGREED PROTECTIVE ORDER
FOR THE TREATMENT AND
EXCHANGE OF CONFIDENTIAL
INFORMATION**

PROTECTIVE ORDER

1 The parties anticipate that documents, testimony, or information containing or
2 reflecting confidential, proprietary, trade secret, and/or commercially sensitive
3 information are likely to be disclosed or produced during the course of this litigation.
4 To expedite the production of discovery material, to facilitate the prompt resolution of
5 disputes over confidentiality of discovery material, to adequately protect information
6 the parties are entitled to keep confidential, to ensure that only the materials the
7 parties are entitled to keep confidential are subject to such treatment, and to ensure
8 that the parties are permitted reasonably necessary uses of confidential discovery
9 material in preparation for and in the conduct of this litigation, pursuant to Fed. R.
10 Civ. P. 26(c), it is hereby stipulated and agreed by the undersigned parties, and

11 **ORDERED THAT:**

12 1. This Order shall be binding on: (a) each named party; and (b) each third-
13 party who receives "Confidential Information" in connection with this litigation.
14 "Confidential Information" shall mean all documents (as defined in Rule 34(a) of the
15 Federal Rules of Civil Procedure), and all other information, including but not limited
16 to deposition or pre-trial testimony, answers to interrogatories, affidavits, admissions,
17 data and other materials and their contents, that are designated as "Confidential"
18 pursuant to the provisions of this Order, and any reproductions, excerpts, summaries,
19 abstracts or other materials derived in whole or in part from such information or which
20 paraphrase, excerpt or contain Confidential Information. For the purposes of this
21 Order, the term "party" means any natural person, partnership, corporation,
22 association, or other legal entity, as well as its parents, subsidiaries, affiliates, board
23 members, officers, employees, agents, attorneys, and representatives.

24 2. To preserve the legitimate proprietary and privacy interests of sources of
25 information, this Order establishes a procedure for disclosing Confidential
26 Information, imposes obligations on persons receiving Confidential Information to
27 protect such information from unauthorized use or disclosure, and establishes a
28 procedure whereby confidentiality designations may be challenged. This Order applies

1 only to information produced or disclosed during the course of this litigation, either by
2 the parties to the suit or by third-parties, that is not otherwise publicly available.

3 3. All information produced or discovered in this litigation that is
4 designated as "Confidential" shall be used solely for the prosecution or defense of this
5 litigation and for no other purpose, unless and until such designation is successfully
6 challenged, and except as provided in Paragraph 18 of this Order.

7 4. This Order imposes restrictions upon those who may receive information
8 (the "Receiving Parties") produced or disclosed during the course of this litigation that
9 is designated "Confidential" by the party who produced the information (the
10 "Disclosing Party").

11 5. The designation "Confidential" shall be limited to information that the
12 Disclosing Party reasonably believes to be a trade secret, or other confidential
13 research, development, financial or commercial information the disclosure of which
14 would seriously prejudice the interest of the Disclosing Party or any other person to
15 whom the Disclosing Party has an obligation to hold the information confidential. The
16 designation "Confidential" shall also include Confidential Information that the
17 Disclosing Party reasonably believes is nonpublic and of a sensitive personal or
18 commercial nature, or should otherwise be subject to "confidential" treatment.

19 6. To designate information "Confidential," the Disclosing Party must so
20 mark it. The designation may be withdrawn by the Disclosing Party. The Disclosing
21 Party must mark each page of each document and/or each significant component of
22 each object containing Confidential Information with the appropriate designation as
23 required. A cover letter may be used, if appropriate, to designate digital data as
24 "Confidential."

25 7. The parties disagree about whether certain categories of information may
26 be entitled to extraordinary protection because their disclosure to unauthorized
27 persons would create a substantial risk of serious competitive or other recognized
28 harm. Therefore, to the extent Defendant Terapeak Inc. ("Defendant") reasonably

1 believes any portion of its document production or provision of information requires a
2 "Confidential - Attorneys' Eyes Only" (or "Confidential - AEO") designation,
3 Defendant will make a motion to the Court regarding designation of such documents
4 and information. Nothing herein shall be construed as requiring Defendant to produce
5 these categories of documents or information under a lesser standard of protection
6 unless or until so ordered by the Court. Both parties reserve all their rights.

7 8. The failure to designate correctly any Confidential Information produced
8 or disclosed in this litigation does not waive the confidentiality otherwise attaching to
9 the Confidential Information. Upon a Disclosing Party's discovery that information
10 was incorrectly designated, that Disclosing Party shall provide notice to the Receiving
11 Parties that the information was inappropriately designated. Upon receipt of such
12 notice, the Receiving Parties shall immediately cease any use of the information that is
13 inconsistent with the new designation. The Receiving Party may object to the new
14 designation pursuant to the procedures set forth in Paragraph 17.

15 9. Inadvertent production of information that a Disclosing Party later claims
16 should not have been produced because of a privilege, including but not limited to the
17 attorney-client privilege or work product doctrine ("Inadvertently Produced Privileged
18 Document"), will not be deemed to waive any privilege. Upon discovery by a
19 Disclosing Party that it has produced an Inadvertently Produced Privileged Document,
20 the Disclosing Party shall promptly notify all parties to which such information was
21 produced. A Disclosing Party may request the return of any Inadvertently Produced
22 Privileged Document by identifying the information inadvertently produced and
23 stating the basis for withholding such information from production. If a Disclosing
24 Party requests the return, pursuant to this paragraph, of any Inadvertently Produced
25 Privileged Document in the custody of another party, the possessing party shall within
26 three (3) business days return to the Disclosing Party the Inadvertently Produced
27 Privileged Document (and all copies thereof) and shall expunge from any other
28 document or material any information reflecting the contents of the Inadvertently

1 Produced Privileged Document. The party returning such material may then move the
2 Court for an order compelling production of the material, as may be appropriate.

3 10. Subject to the provisions of Paragraph 12, and except as provided in
4 Paragraph 13, information designated "Confidential" may only be disclosed to:

- 5 a. partners, counsel, associate attorneys and employees of those law firms
6 who are the attorneys of record for the parties in this action or such other
7 attorneys for the parties who have been retained by the parties to assist
8 counsel of record in this matter and to whom it is necessary that the
9 material be shown, disclosed or otherwise communicated for the
10 purposes of this action;
- 11 b. the parties, and those of their directors, officers, and employees to whom
12 it is necessary that the Confidential Information be shown for purposes of
13 prosecuting and/or defending this action;
- 14 c. the Court and judicial personnel, including court reporters (both audio
15 and video);
- 16 d. any witness in connection with such witness testifying or preparing to
17 testify in any deposition or hearing in this litigation;
- 18 e. consulting or testifying experts who have been retained by a party or its
19 attorney of record for the purpose of prosecuting and/or defending this
20 action;
- 21 f. the direct staff of, and any contract support personnel employed or
22 retained by, the foregoing persons, provided that they are actively
23 involved in this litigation; and
- 24 g. others specifically identified and authorized in writing in advance by the
25 Disclosing Party.

26 11. All persons and parties to be afforded access to Confidential Information
27 shall first be advised of, and provided with a copy of, this Order. Before receiving any
28 Confidential Information pursuant to this Order, the following individuals must also

1 agree in writing, by filling out and signing an affidavit in the form annexed as
2 Attachment A hereto, that they, as well as any direct staff or contract support
3 personnel employed or retained by them, will strictly adhere to the terms of this
4 Order:

- 5 a. Consulting or testifying experts retained by counsel in this litigation;
- 6 b. any witness not otherwise covered under Sections 10(a) or (b) above;
- 7 c. Court reporters (including audio and video).

8 Outside counsel shall be responsible for obtaining and retaining the required
9 signatures.

10 12. A party may utilize Confidential Information in the course of examining
11 a witness during a deposition as follows:

- 12 a. During the deposition of any witness, the party conducting the deposition
13 may utilize the Confidential Information provided by any Disclosing
14 Party.
- 15 b. If the Confidential Information of a party is revealed during deposition of
16 a non-expert witness, the witness (and if the witness is a non-party, his or
17 her counsel as well) shall be prohibited from disclosing such Confidential
18 Information to others or otherwise making any use of such information
19 other than in connection with this litigation.
- 20 c. Depositions which utilize or refer to Confidential Information shall be
21 taken only in the presence of persons and parties qualified pursuant to
22 Paragraphs 10 or 11 hereunder.

23 13. Deposition transcripts shall be treated as "Confidential" for a period of
24 ten (10) business days following service of the official transcript. The deponent, his
25 counsel, or any other party may designate portions of the transcript as "Confidential"
26 which designation shall remain in effect for the duration of this Order, unless
27 successfully challenged. The deponent, his or her counsel, or another party making
28 such a redesignation must advise counsel of record and the court reporter of any

1 changes to the original designation. The court reporter shall mark the face of the
2 transcript appropriately. If any portion of a videotaped deposition is designated
3 pursuant to this Paragraph, the videocassette, videotape, CD or other digital container
4 shall be labeled with the appropriate legend. Nothing in this Paragraph shall prevent a
5 party from making specific designations on the record during a deposition. If such a
6 designation is made during the course of a deposition, any person not authorized to
7 receive that category of information shall be excluded from the deposition until
8 testimony regarding those matters has been concluded.

9 14. When serving subpoenas on third-parties, a copy of this Order shall be
10 included with the subpoena. The protections afforded disclosing parties under this
11 Order shall be available to all third-parties from whom discovery is sought in this
12 litigation.

13 15. All pleadings, motions, briefs, memoranda, and related submissions
14 containing Confidential Information shall be filed under seal, unless such sealing is
15 successfully challenged. Confidential Information to be filed with the Court in this
16 action shall be filed by placing the relevant documents in a sealed envelope or other
17 appropriate sealed container which shall comply with local rules and on which shall
18 be endorsed the caption of this action, an indication of the nature of the contents of the
19 sealed envelope or other container (without disclosing the Confidential Information)
20 the word "Confidential" and a statement in substantially the following form:

21 "Contents Under Seal Subject to Protective Order of the
22 Court dated _____. This Envelope containing confidential
23 information is not to be opened nor the contents thereof
24 displayed or revealed except by order of the Court or
25 upon consent of the parties."

26 Redacted copies of any under seal filings shall be filed with the Court at the
27 same time as the filing of the under seal submissions.

28

1 16. The use of Confidential Information in hearings and other pre-trial
2 proceedings before the Court shall be subject to the following requirements:

3 a. A party may refer to Confidential Information in pre-trial conferences
4 before the Court, at evidentiary or other hearings, and at trial. The use of
5 Confidential Information at trial shall be addressed in the final pre-trial
6 order.

7 b. Any party that reasonably believes it will disclose Confidential
8 Information in any trial proceeding before the Court shall so inform the
9 Court and the Disclosing Party at least forty-eight (48) hours in advance
10 of actual disclosure so that the Court can decide what precautions, if any,
11 are appropriate to protect the Disclosing Party's Confidential
12 Information, including: (i) how exhibits containing Confidential
13 Information should be introduced at the proceeding in order to maintain
14 their confidentiality; (ii) how any references to those exhibits or other
15 Confidential Information should be made on the record; (iii) how
16 witnesses should be instructed on their confidentiality obligations under
17 this Order; (iv) whether persons who are not authorized to receive
18 Confidential Information should be excluded from those portions of the
19 proceeding that concern such information; and (v) how the pertinent
20 portions of a transcript of the proceeding should be designated. A party's
21 obligation, as set out in this Paragraph, is satisfied by that party's explicit
22 citation to the Confidential Information in any papers filed with the Court
23 in connection with the proceeding and received by the Disclosing Party at
24 least forty-eight (48) hours prior to the proceeding.

25 17. The following procedures shall govern any challenges to confidentiality
26 designations:

27 a. If a party reasonably believes that information produced in this litigation
28 should not have been designated "Confidential" it must provide the

1 Disclosing Party with a written objection that identifies the information at
2 issue and states its reasons for questioning the confidentiality
3 designation. The Disclosing Party must respond in writing by fax, email,
4 or hand delivery such that its response is received within six (6) business
5 days, or within such additional time as is reasonable (taking into account
6 the number of documents or other information in issue) and is agreed to
7 by counsel or ordered by the Court.

8 b. If the party challenging the confidentiality designation is not satisfied by
9 the Disclosing Party's response, it may so notify the Disclosing Party in
10 writing ("the Objection"), and if the Disclosing Party does not serve a
11 motion to confirm its designation of "Confidential" within ten (10)
12 business days of its receipt of the Objection, then the Objection will be
13 deemed accepted, and the designation will be modified to suit the
14 Objection going forward. If the Disclosing Party does timely move to
15 confirm the confidentiality designation, then until the Court rules, the
16 confidentiality designation shall remain in effect.

17 18. Nothing in this Order shall prevent a party from (a) using or disclosing its
18 own information, as it deems appropriate without impairing the confidentiality
19 obligations imposed upon all other parties and persons subject to this Order; or (b)
20 using or publishing any material produced and designated by the adverse party as
21 confidential if the party seeking to use such material obtained it independent of the
22 discovery process, e.g., matters of public record, material already in the party's
23 possession, material publicly disclosed at any time by the Disclosing Party, and
24 material that is available from sources other than the Disclosing Party; however, in
25 such event, the burden is on the party seeking to use the material to demonstrate that it
26 obtained such material through independent means.

27 19. This Order shall survive the termination of this litigation. Within sixty
28 (60) days of final termination of this litigation, the parties must return to the disclosing

1 parties or destroy all Confidential Information in their possession, including all
2 originals or copies of documents containing Confidential Information; provided,
3 however, that nothing herein shall require the return or destruction of any work-
4 product of any counsel or paper filed with the Court. When each party has completed
5 its obligations under this Paragraph, it shall provide written notice to that effect to
6 each Disclosing Party.

7 20. Nothing herein shall require a party receiving Confidential Information to
8 risk judicial, administrative, or legislative sanction if such material is subpoenaed,
9 demanded, requested, or otherwise asked for by any court, administrative, legislative,
10 or other governmental body, or any other person purporting to have authority to
11 subpoena, demand, or request such information. Any party or person receiving
12 Confidential Information covered by this Order that receives a request or subpoena for
13 production or disclosure of Confidential Information shall give written notice to the
14 Disclosing Party and to its counsel as soon as practicable, and in all events sufficiently
15 in advance of the Return date for production to give the Disclosing Party an
16 opportunity to object pursuant to the Federal Rules of Civil Procedure or other
17 applicable rules. Such notice shall identify the information sought and enclose a copy
18 of the subpoena or request. In the event that a subpoena, demand or request purports
19 to require production of such Confidential Information on less than five (5) days'
20 notice, the party to whom the subpoena, demand or request is directed shall give
21 immediate telephonic notice of the receipt of such subpoena, demand or request and
22 forthwith hand deliver a copy thereof, to the attorneys for the Disclosing Party. The
23 person subject to the subpoena or other request shall not produce or disclose the
24 requested Confidential Information without consent of the Disclosing Party unless: (a)
25 the Disclosing Party fails to seek relief from the subpoena or request in a timely
26 manner; or (b) notwithstanding the Disclosing Party's request for relief, production or
27 disclosure is ordered by a court of competent jurisdiction.

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Dated: August 7, 2015

FOX ROTHSCHILD LLP

By: /s Patrick Hagan
David Aronoff
Patrick J. Hagan
Attorneys for Defendant,
TERAPEAK INC.


Dated: August 7, 2015

THE DION-KINDEM LAW FIRM

By: /s Peter R. Dion-Kindem
Peter R. Dion-Kindem
Attorneys for Plaintiff,
BARRY ROSEN

SO ORDERED.

Dated: 8/17/15


~~HONORABLE MICHAEL W. FITZGERALD~~
~~UNITED STATES DISTRICT JUDGE~~
Charles F. Eick
United States Magistrate Judge

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ATTACHMENT A

TO THE AGREED PROTECTIVE ORDER FOR THE
TREATMENT AND EXCHANGE OF CONFIDENTIAL INFORMATION
CONFIDENTIALITY AGREEMENT

1. My name is: _____.

2. I reside at: _____.

3. My present employer is: _____.

4. My present occupation or job description is: _____.

5. I have been engaged as _____

on behalf of _____

in the preparation and conduct of litigation styled *Rosen v. Terapeak Inc.*, No. 2:15-cv-00112-MWF-E.

6. I acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as "Confidential". I agree to comply with and be bound by all the provisions of said Order. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Central District of California for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

By: _____.

Executed on _____.