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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ANTIAGING INSTITUTE OF CALIFORNIA, INC.,
a California corporation,

Plaintiff,

vs.

SOLONOVA, LLC, a California
limited liability company, et al.,

Defendants.

Case No. 2:15-cv-3416-AB (FFMx)
Hon. André Birotte, Jr.
Magistrate Judge Frederick F. Mumm

PROTECTIVE ORDER

PROTECTIVE ORDER

The Court, finding that a protective order is proper and desirable in the circumstances of this case, and good cause appearing therefore, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, makes the following Order for the benefit of all parties and witnesses to govern the course of the proceedings in this case:

1. **DEFINITIONS.**

1.1 **Party:** any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

1 1.2 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner generated, stored, or maintained (including,
3 among other things, testimony, transcripts, or tangible things) that are produced or
4 generated in disclosures or responses to discovery in this matter.

5 1.3 “Confidential” Information or Items: information (regardless of
6 how generated, stored or maintained) or tangible things that qualify for protection
7 under standards developed under F.R.Civ.P. 26(c).

8 1.4 “Highly Confidential -- Outside Counsel Only” Information or
9 Items: extremely sensitive “Confidential Information or Items” whose disclosure to
10 another Party or nonparty would create a substantial risk of serious injury that could
11 not be avoided by less restrictive means.

12 1.5 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 1.6 Producing Party: a Party or non-party that produces Disclosure
15 or Discovery Material in this action.

16 1.7. Designating Party: a Party or non-party that designates
17 information or items that it produces in disclosures or in responses to discovery as
18 “Confidential” or “Highly Confidential -- Outside Counsel Only.”

19 1.8 Protected Material: any Disclosure or Discovery Material that is
20 designated as “Confidential” or as “Highly Confidential -- Outside Counsel Only.”

21 1.9 Outside Counsel: Attorneys (as well as their support staffs) who
22 are retained to represent or advise a Party in this action.

23 1.10 Expert: a person with specialized knowledge or experience in a
24 matter pertinent to the litigation who has been retained by a Party or its counsel to
25 serve as an expert witness or as a consultant in this action. This definition includes
26 a professional jury or trial consultant retained in connection with this litigation. The
27 expert witness or consultant may not be a past or a current employee of the Party
28 (including any affiliates or related entities) adverse to the Party engaging the expert

1 witness or consultant, or someone who at the time of retention is anticipated to
2 become an employee of the Party (including any affiliates or related entities)
3 adverse to the Party engaging the expert witness or consultant. Moreover, the expert
4 witness or consultant may not be a current employee or anticipated to become an
5 employee of any entity who is a competitor of the Party adverse to the Party
6 engaging the expert witness or consultant.

7 1.11 Professional Vendors: persons or entities that provide litigation
8 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
9 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
10 and their employees and subcontractors.

11 2. SCOPE.

12 The protections conferred by this Protective Order Governing Discovery
13 cover not only Protected Material (as defined above), but also any information
14 copied or extracted therefrom, as well as all copies, excerpts, summaries, or
15 compilations thereof, plus testimony, conversations, or presentations by parties or
16 counsel to or in court or in other settings that might reveal Protected Material. This
17 Protective Order Governing Discovery does not confer blanket protections on all
18 disclosures or responses to discovery. The protection it affords extends only to the
19 limited information or items that are entitled under the applicable legal principles to
20 treatment as confidential.

21 3. DURATION.

22 Even after the termination of this litigation, the confidentiality obligations
23 imposed by this Order shall remain in effect until a Designating Party agrees
24 otherwise in writing or a court order otherwise directs.

25 4. DESIGNATING PROTECTED MATERIAL.

26 4.1 Exercise of Restraint and Care in Designating Material for
27 Protection. Each Party or non-party that designates information or items for
28 protection under this Order must take care to limit any such designation to specific

1 material that qualifies under the appropriate standards. A Designating Party must
2 take care to designate for protection only those parts of material, documents, items,
3 or oral or written communications that qualify -- so that other portions of the
4 material, documents, items, or communications for which protection is not
5 warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited.
7 Designations that are shown to be clearly unjustified, or that have been made for an
8 improper purpose (e.g., to unnecessarily encumber or retard the case development
9 process, or to impose unnecessary expenses and burdens on other parties), expose
10 the Designating Party to sanctions.

11 If it comes to a Party's or a non-party's attention that information or
12 items that it designated for protection do not qualify for protection at all, or do not
13 qualify for the level of protection initially asserted, that Party or non-party must
14 promptly notify all other parties that it is withdrawing the mistaken designation.

15 4.2 Manner and Timing of Designations. Except as otherwise
16 provided in this Order (see, e.g., second paragraph of section 4.2(a), below), or as
17 otherwise stipulated or ordered, material that qualifies for protection under this
18 Order must be clearly so designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (apart from
21 transcripts of depositions or other pretrial or trial proceedings), that the Producing
22 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
23 OUTSIDE COUNSEL ONLY" at the top or bottom of each page that contains
24 protected material. If only a portion or portions of the material on a page qualifies
25 for protection, the Producing Party also must clearly identify the protected portion(s)
26 (e.g., by making appropriate markings in the margins) and must specify, for each
27 portion, the level of protection being asserted (either "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL ONLY").

1 A Party or non-party that makes original documents or materials
2 available for inspection need not designate them for protection until after the
3 inspecting Party has indicated which material it would like copied and produced.
4 During the inspection and before the designation, all of the material made available
5 for inspection shall be deemed “HIGHLY CONFIDENTIAL -- OUTSIDE
6 COUNSEL ONLY.” After the inspecting Party has identified the documents it
7 wants copied and produced, the Producing Party must determine which documents,
8 or portions thereof, qualify for protection under this Order, then, before producing
9 the specified documents, the Producing Party must affix the appropriate legend
10 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL
11 ONLY”) at the top or bottom of each page that contains Protected Material. If only
12 a portion or portions of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
14 markings in the margins) and must specify, for each portion, the level of protection
15 being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
16 OUTSIDE COUNSEL ONLY”).

17 (b) for testimony given in deposition, that the Party or non-
18 party offering or sponsoring the testimony identify on the record, before the close of
19 the deposition, all protected testimony, and further specify any portions of the
20 testimony that qualify as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
21 OUTSIDE COUNSEL ONLY.” When it is impractical to identify separately each
22 portion of testimony that is entitled to protection, and when it appears that
23 substantial portions of the testimony may qualify for protection, the Party or non-
24 party that sponsors, offers, or gives the testimony may invoke on the record (before
25 the deposition is concluded) a right to have up to 20 days to identify the specific
26 portions of the testimony as to which protection is sought and to specify the level of
27 protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
28 OUTSIDE COUNSEL ONLY”). Only those portions of the testimony that are

1 appropriately designated for protection within the 20 days shall be covered by the
2 provisions of this Protective Order Governing Discovery.

3 Deposition transcript pages containing Protected Material must
4 be separately bound by the court reporter, who must affix to the top of each such
5 page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- OUTSIDE
6 COUNSEL ONLY,” as instructed by the Party or nonparty offering or sponsoring
7 the witness or presenting the testimony.

8 (c) for information produced in some form other than
9 documentary, and for any other tangible items, that the Producing Party affix in a
10 prominent place on the exterior of the container or containers in which the
11 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY.” If only portions of the
13 information or item warrant protection, the Producing Party, to the extent
14 practicable, shall identify the protected portions, specifying whether they qualify as
15 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL
16 ONLY.”

17 4.3 Inadvertent Failures to Designate. If timely corrected, an
18 inadvertent failure to designate qualified information or items as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL
20 ONLY” does not, standing alone, waive the Designating Party’s right to secure
21 protection under this Order for such material. If material is appropriately designated
22 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- OUTSIDE COUNSEL
23 ONLY” after the material was initially produced, the Receiving Party, on timely
24 notification of the designation, must make reasonable efforts to assure that the
25 material is treated in accordance with the provisions of this Order.

26 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS.

27 5.1 Timing of Challenges. Unless a prompt challenge to a
28 Designating Party’s confidentiality designation is necessary to avoid foreseeable

1 substantial unfairness, unnecessary economic burdens, or a later significant
2 disruption or delay of the litigation, a Party does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after the
4 original designation is disclosed.

5 5.2 Procedure For Challenging Designation. A Party that elects to
6 initiate a challenge to a Designating Party's confidentiality designation must do so
7 by the procedure set forth in Local Rule 37. Until the Court rules on the challenge,
8 all parties shall continue to afford the material in question the level of protection to
9 which it is entitled under the Producing Party's designation.

10 5.3 Procedure -- Requesting Permission to Disclosure HIGHLY
11 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY Materials to Party. If a Party's
12 Outside Counsel determines that his or her ability to provide the Party with a full
13 and robust representation in this matter has been hindered because the Outside
14 Counsel is unable to disclose information that has been designated HIGHLY
15 CONFIDENTIAL -- OUTSIDE COUNSEL ONLY to that Party, Outside Counsel
16 may seek permission to disclose the information to that Party by the procedure set
17 forth in Local Rule 37. Until the Court rules on the challenge, all parties shall
18 continue to afford the material in question the level of protection to which it is
19 entitled under the Producing Party's designation.

20 6. ACCESS TO AND USE OF PROTECTED MATERIAL.

21 6.1 Basic Principles. A Receiving Party may use Protected Material
22 that is disclosed or produced by another Party or by a non-party in connection with
23 this case only for prosecuting, defending, or attempting to settle this litigation. Such
24 Protected Material may be disclosed only to the categories of persons and under the
25 conditions described in this Order. When the litigation has been terminated, a
26 Receiving Party must comply with the provisions of section 10, below (FINAL
27 DISPOSITION).

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

4 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated CONFIDENTIAL
7 only to:

8 (a) the Receiving Party’s Outside Counsel and in-house
9 counsel, as well as employees of said Outside Counsel and in-house counsel to
10 whom it is reasonably necessary to disclose the information for this litigation;

11 (b) Board members, officers and directors of the Receiving
12 Party who have agreed in writing to be bound by this Order;

13 (c) Other employees of the Receiving Party to whom
14 disclosure is reasonably necessary for this litigation and who have agreed in writing
15 to be bound by this Order;

16 (d) Experts (as defined in this Order) of the Receiving Party to
17 whom disclosure is reasonably necessary for this litigation and who have agreed in
18 writing to be bound by this Order;

19 (e) the Court and its personnel;

20 (f) court reporters, their staffs, and professional vendors to
21 whom disclosure is reasonably necessary for this litigation and who have agreed in
22 writing to be bound by this Order;

23 (g) during their depositions, witnesses in the action to whom
24 disclosure is reasonably necessary and who have agreed in writing to be bound by
25 this Order. Pages of transcribed deposition testimony or exhibits to depositions that
26 reveal Protected Material must be separately bound by the court reporter and may
27 not be disclosed to anyone except as permitted under this Protective Order

28 Governing Discovery.

1 (h) the author and recipients of the document or the original
2 source of the information.

3 6.3 Disclosure of “HIGHLY CONFIDENTIAL -- OUTSIDE
4 COUNSEL ONLY” Information or Items. Unless otherwise ordered by the court or
5 permitted in writing by the Designating Party, a Receiving Party may disclose any
6 information or item designated “HIGHLY CONFIDENTIAL -- OUTSIDE
7 COUNSEL ONLY” only to:

8 (a) the Receiving Party’s Outside Counsel, as well as
9 employees of said Outside Counsel to whom it is reasonably necessary to disclose
10 the information for this litigation;

11 (b) Experts (as defined in this Order) of the Receiving Party to
12 whom disclosure is reasonably necessary for this litigation and who have agreed in
13 writing to be bound by this Order;

14 (c) the Court and its personnel;

15 (d) court reporters, their staffs, and professional vendors to
16 whom disclosure is reasonably necessary for this litigation and who have agreed in
17 writing to be bound by this Order; and

18 (e) the author and recipients of the document or the original
19 source of the information.

20 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
21 PRODUCED IN OTHER LITIGATION.

22 If a Receiving Party is served with a subpoena or an order issued in
23 other litigation that would compel disclosure of any information or items designated
24 in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- OUTSIDE
25 COUNSEL ONLY,” the Receiving Party must so notify the Designating Party, in
26 writing (by fax, if possible) immediately and in no event more than three court days
27 after receiving the subpoena or order. Such notification must include a copy of the
28 subpoena or court order. The Receiving Party also must immediately inform in

1 writing the Party who caused the subpoena or order to issue in the other litigation
2 that some or all the material covered by the subpoena or order is the subject of this
3 Protective Order. In addition, the Receiving Party must deliver a copy of this
4 Protective Order Governing Discovery promptly to the Party in the other action that
5 caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to
7 the existence of this Protective Order and to afford the Designating Party in this case
8 an opportunity to try to protect its confidentiality interests in the court from which
9 the subpoena or order issued. The Designating Party shall bear the burdens and the
10 expenses of seeking protection in that court of its confidential material -- and
11 nothing in these provisions should be construed as authorizing or encouraging a
12 Receiving Party in this action to disobey a lawful directive from another court.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Protective Order Governing Discovery, the Receiving Party must immediately
17 (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use
18 its best efforts to retrieve all copies of the Protected Material, (c) inform the person
19 or persons to whom unauthorized disclosures were made of all the terms of this
20 Order, and (d) request such person or persons to agree in writing to be bound by this
21 Order

22 9. FILING PROTECTED MATERIAL.

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

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1 10. FINAL DISPOSITION.

2 Unless otherwise ordered or agreed in writing by the Producing Party, within
3 sixty days after the final termination of this action, each Receiving Party must return
4 all Protected Material to the Producing Party. As used in this subdivision, “all
5 Protected Material” includes all copies, abstracts, compilations, summaries or any
6 other form of reproducing or capturing any of the Protected Material. With
7 permission in writing from the Designating Party, the Receiving Party may destroy
8 some or all of the Protected Material instead of returning it. Whether the Protected
9 Material is returned or destroyed, the Receiving Party must submit a written
10 certification to the Producing Party (and, if not the same person or entity, to the
11 Designating Party) by the sixty day deadline that identifies (by category, where
12 appropriate) all the Protected Material that was returned or destroyed and that
13 affirms that the Receiving Party has not retained any copies, abstracts, compilations,
14 summaries or other forms of reproducing or capturing any of the Protected Material.

15 Notwithstanding this provision, Counsel are entitled to retain an archival copy
16 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
17 attorney work product, even if such materials contain Protected Material. Any such
18 archival copies that contain or constitute Protected Material remain subject to this
19 Protective Order as set forth in Section 3 (DURATION), above.

20 11. MISCELLANEOUS.

21 11.1 Right to Further Relief. Nothing in this Order abridges the right
22 of any person to seek its modification by the Court in the future.

23 11.2 Right to Assert Other Objections. By stipulating to the entry of
24 this Protective Order Governing Discovery no Party waives any right it otherwise
25 would have to object to disclosing or producing any information or item on any
26 ground not addressed in this Protective Order Governing Discovery. Similarly, no
27 Party waives any right to object on any ground to use in evidence of any of the
28 material covered by this Protective Order.

1 11.3 Inadvertent Production of Privileged Documents. If a Party,
2 through inadvertence, produces any document or information that it believes is
3 immune from discovery pursuant to an attorney-client privilege, the work product
4 privilege, or any other privilege, such production shall not be deemed a waiver of
5 any privilege, and the Producing Party may give written notice to the Receiving
6 Party that the document or information produced is deemed privileged and that
7 return of the document or information is requested. Upon receipt of such notice, the
8 Receiving Party shall immediately gather the original and all copies of the document
9 or information of which the Receiving Party is aware, in addition to any abstracts,
10 summaries, or descriptions thereof, and shall immediately return the original and all
11 such copies to the Producing Party. Nothing stated herein shall preclude a Party
12 from challenging an assertion by the other Party of privilege or confidentiality.

13 12. The provisions of this Protective Order are subject to further Court
14 order based upon public policy and other considerations.

15 13. Without separate and subsequent Court order, this Protective Order
16 does not change, amend, or circumvent any Court rule or Local Rule.

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18 Dated: June 29, 2016

19
20 /S/ FREDERICK F. MUMM
21 FREDERICK F. MUMM
22 United States Magistrate Judge