

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, WESTERN DIVISION

BVP HOLDING, INC.,

Plaintiff,

v.

PARADIGM HEALTH &
WELLNESS, INC.,

Defendant.

Case No. 2:19-cv-00437 GW (FFMx)

**[PROPOSED] ORDER GRANTING
STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to

1 file confidential information under seal; Civil Local Rule 79-5 sets forth the
2 procedures that must be followed and the standards that will be applied when a party
3 seeks permission from the court to file material under seal.

4 B. GOOD CAUSE STATEMENT

5 This action is likely to involve trade secrets, customer and pricing lists and
6 other valuable research, development, commercial, financial, technical and/or
7 proprietary information for which special protection from public disclosure and
8 from use for any purpose other than prosecution of this action is warranted. Such
9 confidential and proprietary materials and information consist of, among other
10 things, confidential business or financial information, information regarding
11 confidential business practices, or other confidential research, development, or
12 commercial information (including information implicating privacy rights of third
13 parties), information otherwise generally unavailable to the public, or which may be
14 privileged or otherwise protected from disclosure under state or federal statutes,
15 court rules, case decisions, or common law. Accordingly, to expedite the flow of
16 information, to facilitate the prompt resolution of disputes over confidentiality of
17 discovery materials, to adequately protect information the parties are entitled to keep
18 confidential, to ensure that the parties are permitted reasonable necessary uses of
19 such material in preparation for and in the conduct of trial, to address their handling
20 at the end of the litigation, and serve the ends of justice, a protective order for such
21 information is justified in this matter. It is the intent of the parties that information
22 will not be designated as confidential for tactical reasons and that nothing be so
23 designated without a good faith belief that it has been maintained in a confidential,
24 non-public manner, and there is good cause why it should not be part of the public
25 record of this case.

26 ///

27 ///

28 ///

1 2. DEFINITIONS

2 2.1 Action: *BVP Holding, Inc. v. Paradigm Health & Wellness, Inc.*, 2:19-
3 cv-00437 GW FFMx.

4 2.2 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
7 how it is generated, stored or maintained) or tangible things that qualify for
8 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
9 the Good Cause Statement.

10 2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”
11 Information or Items: extremely sensitive “CONFIDENTIAL” Information or
12 Items, the disclosure of which to another Party or Non-Party would create a
13 substantial risk of serious harm that could not be avoided by less restrictive means.

14 2.5 Counsel: Outside Counsel of Record and In-House Counsel (as well as
15 their support staff).

16 2.6 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
19 ONLY.”

20 2.7 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.8 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

27 ///

28 ///

1 2.9 In-House Counsel: attorneys who are employees of a party to this
2 Action. In-House Counsel does not include Outside Counsel of Record or any other
3 outside counsel.

4 2.10 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.11 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent or advise a party to this Action and
8 have appeared in this Action on behalf of that party or are affiliated with a law firm
9 which has appeared on behalf of that party, and includes support staff.

10 2.12 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.14 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.15 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL --
21 ATTORNEYS’ EYES ONLY.”

22 2.16 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or

28 ///

1 compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the
4 trial judge. This Order does not govern the use of Protected Material at trial.

5 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection
17 under this Order must take care to limit any such designation to specific material
18 that qualifies under the appropriate standards. To the extent practicable, only those
19 parts of material, documents, items, or oral or written communications that require
20 protection shall be designated.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations
22 that are shown to be clearly unjustified or that have been made for an improper
23 purpose (e.g., to unnecessarily encumber the case development process or to impose
24 unnecessary expenses and burdens on other parties) may expose the Designating
25 Party to sanctions.

26 If it comes to a Designating Party's attention that information or items that it
27 designated for protection do not qualify for protection, that Designating Party must
28 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations.

2 Except as otherwise provided in this Order (see, *e.g.*, second paragraph of
3 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
4 Material that qualifies for protection under this Order must be clearly so designated
5 before the material is disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (*e.g.*, paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at a minimum, the legend
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
11 ONLY,” to each page that contains protected material. If only a portion or portions
12 of the material on a page qualifies for protection, the Producing Party also must
13 clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the
14 margins). Notwithstanding the foregoing, for information produced in native
15 electronic file format such that designating each page or portion of the contents of
16 the file is impractical or unduly burdensome, the Producing Party shall affix
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
18 ONLY” to the end of the file name or on a cover sheet accompanying the file.

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
24 documents it wants copied and produced, the Producing Party must determine which
25 documents, or portions thereof, qualify for protection under this Order. Then, before
26 producing the specified documents, the Producing Party must affix the
27 “CONFIDENTIAL legend” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
28 EYES ONLY” legend to each page that contains Protected Material. If only a

1 portion or portions of the material on a page qualifies for protection, the Producing
2 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
3 markings in the margins).

4 (b) for testimony given in depositions that the Designating Party identify
5 the Disclosure or Discovery Material on the record, before the close of the
6 deposition all protected testimony, or by written notice to the Receiving Party within
7 seven days after receipt of the deposition's final transcript. Unless otherwise agreed
8 by the Parties, all testimony given in depositions shall be treated as Protected
9 Material for seven days after receipt of the deposition's final transcript.

10 (c) for information produced in some form other than documentary and
11 for any other tangible items, that the Producing Party affix in a prominent place on
12 the exterior of the container or containers in which the information is stored the
13 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -- ATTORNEYS'
14 EYES ONLY." If only a portion or portions of the information warrants protection,
15 the Producing Party, to the extent practicable, shall identify the protected portion(s).

16 5.3 Inadvertent Failures to Designate.

17 If timely corrected, an inadvertent failure to designate qualified information
18 or items does not, standing alone, waive the Designating Party's right to secure
19 protection under this Order for such material. Upon timely correction of a
20 designation, the Receiving Party must make reasonable efforts to assure that the
21 material is treated in accordance with the provisions of this Order.

22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
24 designation of confidentiality and/or a Designating Party's refusal to permit a
25 Receiving Party to disclose "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
26 ONLY" information or items to a decision-maker pursuant to Section 7.3(h) at any
27 time that is consistent with the Court's Scheduling Order.

28 ///

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
2 resolution process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived or withdrawn the confidentiality designation, all parties shall
8 continue to afford the material in question the level of protection to which it is
9 entitled under the Producing Party’s designation until the Court rules on the
10 challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles.

13 A Receiving Party may use Protected Material that is disclosed or produced
14 by another Party or by a Non-Party in connection with this Action only for
15 prosecuting, defending, or attempting to settle this Action. Such Protected Material
16 may be disclosed only to the categories of persons and under the conditions
17 described in this Order. When the Action has been terminated, a Receiving Party
18 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

22 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
23 otherwise ordered by the court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 “CONFIDENTIAL” only to:

26 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
27 well as employees of said Outside Counsel of Record to whom it is reasonably
28 necessary to disclose the information for this Action;

1 (b) the officers, directors, and employees (including In-House Counsel) of
2 the Receiving Party to whom disclosure is reasonably necessary for this Action;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) this Court and its personnel, and the jury;

7 (e) any person who is reasonably identified as previously having had
8 access to, or the right to have access to, the information, which identification is
9 made by the sworn testimony of another or unambiguously appears on the face of a
10 document, other than through an unlawful means and/or a means constituting breach
11 of this Stipulated Protective Order;

12 (f) during their depositions, witnesses in the Action to whom disclosure is
13 reasonably necessary and who have signed the “Acknowledgment and Agreement to
14 Be Bound” (Exhibit A); and

15 (g) any mediator or settlement officer, and their supporting personnel,
16 mutually agreed upon by any of the parties engaged in settlement discussions.

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
18 ONLY” Information or Items.

19 Unless otherwise ordered by the court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item
21 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
23 as employees of said Outside Counsel of Record to whom it is reasonably necessary
24 to disclose the information for this Action;

25 (b) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (c) the court and its personnel;

1 (d) private court reporters and their staff to whom disclosure is reasonably
2 necessary for this Action and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);

4 (e) professional jury or trial consultants, mock jurors, and Professional
5 Vendors to whom disclosure is reasonably necessary for this Action and who have
6 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7 (f) the author or recipient of a document containing the information or a
8 custodian or other person who otherwise possessed or knew the information;

9 (g) any mediator or settlement officer, and their supporting personnel,
10 mutually agreed upon by any of the parties engaged in settlement discussions; and

11 (h) subject to written approval by the Designating Party, which shall not be
12 unreasonably withheld, a Receiving Party’s decision-maker, which for BVP
13 Holding, Inc. (“BVP”) is Robert A. Piane, Jr., President of BVP, unless otherwise
14 identified in writing by BVP and for Paradigm Health & Wellness, Inc.
15 (“Paradigm”) is Jackson Hsieh, Product Manager, unless otherwise identified in
16 writing by Paradigm.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
18 IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this Action as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
22 ONLY,” that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification
24 shall include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order
26 to issue in the other litigation that some or all of the material covered by the
27 subpoena or order is subject to this Protective Order. Such notification shall include
28 a copy of this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be
2 pursued by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this
5 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’
6 EYES ONLY” before a determination by the court from which the subpoena or
7 order issued, unless the Party has obtained the Designating Party’s permission. The
8 Designating Party shall bear the burden and expense of seeking protection in that
9 court of its confidential material and nothing in these provisions should be construed
10 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
11 directive from another court.

12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
13 PRODUCED IN THIS LITIGATION

14 (a) The terms of this Order are applicable to information produced by a
15 Non-Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by
17 Non-Parties in connection with this litigation is protected by the remedies and relief
18 provided by this Order. Nothing in these provisions should be construed as
19 prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to
21 produce a Non-Party’s confidential information in its possession, and the Party is
22 subject to an agreement with the Non-Party not to produce the Non-Party’s
23 confidential information, then the Party shall:

24 (1) promptly notify in writing the Requesting Party and the Non-Party
25 that some or all of the information requested is subject to a confidentiality
26 agreement with a Non-Party;

27 ///

28 ///

1 (2) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this Action, the relevant discovery request(s), and a reasonably
3 specific description of the information requested; and

4 (3) make the information requested available for inspection by the
5 Non-Party, if requested.

6 (c) If the Non-Party fails to seek a protective order from this court within
7 14 days of receiving the notice and accompanying information, the Receiving Party
8 may produce the Non-Party's confidential information responsive to the discovery
9 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
10 not produce any information in its possession or control that is subject to the
11 confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party shall bear the burden and
13 expense of seeking protection in this court of its Protected Material.

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 The inadvertent production by a Producing Party of material subject to the
28 attorney-client privilege, work-product protection, or any other applicable privilege

1 or protection, despite that Producing Party's reasonable efforts to prescreen such
2 material prior to production, will not waive the applicable privilege and/or
3 protection if a request for return of such inadvertently produced material is made
4 promptly after the Producing Party learns of its inadvertent production. Upon such a
5 request, the Receiving Party shall immediately destroy or return to the Producing
6 Party such material and all copies. Nothing herein shall prevent the Receiving Party
7 from preparing a record for its own use containing the date, author, addresses, and
8 topic of the inadvertently produced material and such other information as is
9 reasonably necessary to identify the material and describe its nature to the Court in
10 any motion to compel production of the material.

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this
15 Protective Order, no Party waives any right it otherwise would have to object to
16 disclosing or producing any information or item on any ground not addressed in this
17 Stipulated Protective Order. Similarly, no Party waives any right to object on any
18 ground to use in evidence of any of the material covered by this Protective Order.

19 12.3 Filing Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
21 only be filed under seal pursuant to a court order authorizing the sealing of the
22 specific Protected Material at issue. If a Party's request to file Protected Material
23 under seal is denied by the court, then the Receiving Party may file the information
24 in the public record unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in paragraph 4, within 60
27 days of a written request by the Designating Party, each Receiving Party must return
28 all Protected Material to the Producing Party or destroy such material. As used in

1 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
2 summaries, and any other format reproducing or capturing any of the Protected
3 Material. Upon the written request of the Designating Party, the Receiving Party
4 returning and/or destroying the Protected Material must promptly certify in writing
5 its compliance with the requirements of this paragraph. Notwithstanding this
6 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
7 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
8 deposition and trial exhibits, expert reports, attorney work product, and consultant
9 and expert work product, even if such materials contain Protected Material. Any
10 such archival copies that contain or constitute Protected Material remain subject to
11 this Protective Order as set forth in Section 4 (DURATION).

12 14. Any violation of this Order may be punished by any and all appropriate
13 measures including, without limitation, contempt proceedings and/or monetary
14 sanctions.

15
16 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

17
18
19 Dated: October 3, 2019

20 /S/ FREDERICK F. MUMM
21 Honorable Frederick F. Mumm
22 United States Magistrate Judge
23
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated
6 Protective Order that was issued by the United States District Court for the Central
7 District of California in the case of *BVP Holding, Inc. v. Paradigm Health &*
8 *Wellness, Inc.*, 2:19-cv-00437 GW FFMx. I agree to comply with and to be bound
9 by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action. I hereby appoint _____
18 [print or type full name] of _____ [print
19 or type full address and telephone number] as my California agent for service of
20 process in connection with this action or any proceedings related to enforcement of
21 this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 Signature: _____

27
28