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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ProSource Discounts, Inc., a California corporation,

Plaintiff,

v.

Kipp K. Dye, an individual; Performance Solutions, LLC, a Massachusetts limited liability company; and DOES 1-10, inclusive,

Defendants.

Case No. 2:19-cv-00489-AB-JC

Hon. Andre Birotte Jr.

ORDER GRANTING STIPULATED PROTECTIVE ORDER

Complaint filed: January 22, 2019

Performance Solutions, LLC, a Massachusetts limited liability company

Counter-Claimant,

v.

ProSource Discounts, Inc., a California corporation,

Counter-Defendant.

1 1. A. PURPOSES AND LIMITATIONS

2 As the parties have represented that discovery in this action is likely to
3 involve production of confidential, proprietary, or private information for which
4 special protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted, this Court enters the following
6 Protective Order. This Order does not confer blanket protections on all disclosures
7 or responses to discovery. The protection it affords from public disclosure and use
8 extends only to the limited information or items that are entitled to confidential
9 treatment under the applicable legal principles. Further, as set forth in Section 12.3,
10 below, this Protective Order does not entitle the parties to file confidential
11 information under seal. Rather, when the parties seek permission from the court to
12 file material under seal, the parties must comply with Civil Local Rule 79-5 and
13 with any pertinent orders of the assigned District Judge and Magistrate Judge.

14 B. GOOD CAUSE STATEMENT

15 In light of the nature of the claims and allegations in this case and the parties’
16 representations that discovery in this case will involve the production of confidential
17 records, and in order to expedite the flow of information, to facilitate the prompt
18 resolution of disputes over confidentiality of discovery materials, to adequately
19 protect information the parties are entitled to keep confidential, to ensure that the
20 parties are permitted reasonable necessary uses of such material in connection with
21 this action, to address their handling of such material at the end of the litigation, and
22 to serve the ends of justice, a protective order for such information is justified in this
23 matter. The parties shall not designate any information/documents as confidential
24 without a good faith belief that such information/documents have been maintained
25 in a confidential, non-public manner, and that there is good cause or a compelling
26 reason why it should not be part of the public record of this case.

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2. DEFINITIONS

2.1 Action: The instant action: Prosource Discounts, Inc. v. Kipp K. Dye, et al., Case No. 2:19-cv-00489-AB-JC.

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

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

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

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

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

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

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

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1 2.9 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 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 Order cover not only Protected Material (as
26 defined above), but also (1) any information copied or extracted from Protected
27 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;

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1 and (3) any deposition testimony, conversations, or presentations by Parties or their
2 Counsel that might reveal Protected Material, other than during a court hearing or at
3 trial.

4 Any use of Protected Material during a court hearing or at trial shall be
5 governed by the orders of the presiding judge. This Order does not govern the use
6 of Protected Material during a court hearing or at trial.

7 4. DURATION

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

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each Party or Non-Party that designates information or items for protection under
19 this Order must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The Designating Party must designate for
21 protection only those parts of material, documents, items, or oral or written
22 communications that qualify so that other portions of the material, documents,
23 items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order.

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

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

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions), that the Producing Party affix
14 at a minimum, the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL --
15 ATTORNEYS' EYES ONLY" to each page that contains protected material. If
16 only a portion or portions of the material on a page qualifies for protection, the
17 Producing Party also must clearly identify the protected portion(s) (e.g., by making
18 appropriate markings in the margins).

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,
26 before producing the specified documents, the Producing Party must affix the
27 "CONFIDENTIAL", or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES
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1 ONLY” legend to each page that contains Protected Material. If only a portion or
2 portions of the material on a page qualifies for protection, the Producing Party also
3 must clearly identify the protected portion(s) (e.g., by making appropriate markings
4 in the margins).

5 (b) for testimony given in depositions that the Designating Party identifies
6 on the record, before the close of the deposition as protected testimony.

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

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
14 failure to designate qualified information or items does not, standing alone, waive
15 the Designating Party’s right to secure protection under this Order for such material.
16 Upon timely correction of a designation, the Receiving Party must make reasonable
17 efforts to assure that the material is treated in accordance with the provisions of this
18 Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
21 designation of confidentiality at any time that is consistent with the Court’s
22 Scheduling Order.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
24 resolution process under Local Rule 37-1 et seq.

25 6.3 The burden of persuasion in any such challenge proceeding shall be on
26 the Designating Party. Frivolous challenges, and those made for an improper
27 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
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1 parties) may expose the Challenging Party to sanctions. Unless the Designating
2 Party has waived or withdrawn the confidentiality designation, all parties shall
3 continue to afford the material in question the level of protection to which it is
4 entitled under the Producing Party's designation until the Court rules on the
5 challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this
9 Action only for prosecuting, defending, or attempting to settle this Action. Such
10 Protected Material may be disclosed only to the categories of persons and under the
11 conditions described in this Order. When the Action has been terminated, a
12 Receiving Party must comply with the provisions of Section 13 below.

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

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

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

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

25 (c) 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);

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- 1 (d) the court and its personnel;
- 2 (e) private court reporters and their staff to whom disclosure is reasonably
3 necessary for this Action and who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A);
- 5 (f) professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary for this Action and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 8 (g) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information;
- 10 (h) during their depositions, witnesses, and attorneys for witnesses, in the
11 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
12 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
13 (Exhibit A); and (2) they will not be permitted to keep any confidential information
14 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
15 unless otherwise agreed by the Designating Party or ordered by the court. Pages of
16 transcribed deposition testimony or exhibits to depositions that reveal Protected
17 Material may be separately bound by the court reporter and may not be disclosed to
18 anyone except as permitted under this Protective Order; and
- 19 (i) any mediator or settlement officer, and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions.

21 7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
22 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
23 writing by the Designating Party, a Receiving Party may disclose any information or
24 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
25 to:

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

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

7 (c) the court and its personnel;

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

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

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

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

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

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

24 (a) promptly notify in writing the Designating Party. Such notification
25 shall include a copy of the subpoena or court order unless prohibited by law;

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

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

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

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

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

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

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

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

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

9 (c) If a Non-Party represented by counsel fails to commence the process
10 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
11 notice and accompanying information or fails contemporaneously to notify the
12 Receiving Party that it has done so, the Receiving Party may produce the Non-
13 Party's confidential information responsive to the discovery request. If an
14 unrepresented Non-Party fails to seek a protective order from this court within 14
15 days of receiving the notice and accompanying information, the Receiving Party
16 may produce the Non-Party's confidential information responsive to the discovery
17 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
18 not produce any information in its possession or control that is subject to the
19 confidentiality agreement with the Non-Party before a determination by the court
20 unless otherwise required by the law or court order. Absent a court order to the
21 contrary, the Non-Party shall bear the burden and expense of seeking protection in
22 this court of its Protected Material.

23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Protective Order, the Receiving Party must immediately (a) notify in writing the
27 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
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1 all unauthorized copies of the Protected Material, (c) inform the person or persons to
2 whom unauthorized disclosures were made of all the terms of this Order, and
3 (d) request such person or persons to execute the “Acknowledgment and Agreement
4 to Be Bound” (Exhibit A).

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
6 OTHERWISE PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
11 procedure may be established in an e-discovery order that provides for production
12 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
13 (e), insofar as the parties reach an agreement on the effect of disclosure of a
14 communication or information covered by the attorney-client privilege or work
15 product protection, the parties may incorporate their agreement into this Protective
16 Order.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

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

25 12.3 Filing Protected Material. A Party that seeks to file under seal any
26 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
27 orders of the assigned District Judge and Magistrate Judge. Protected Material may
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1 only be filed under seal pursuant to a court order authorizing the sealing of the
2 specific Protected Material at issue. If a Party’s request to file Protected Material
3 under seal is denied by the court, then the Receiving Party may file the information
4 in the public record unless otherwise instructed by the court.

5 13. FINAL DISPOSITION

6 After the final disposition of this Action, as defined in Section 4, within 60
7 days of a written request by the Designating Party, each Receiving Party must return
8 all Protected Material to the Producing Party or destroy such material. As used in
9 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
10 summaries, and any other format reproducing or capturing any of the Protected
11 Material. Whether the Protected Material is returned or destroyed, the Receiving
12 Party must submit a written certification to the Producing Party (and, if not the same
13 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
14 (by category, where appropriate) all the Protected Material that was returned or
15 destroyed and (2) affirms that the Receiving Party has not retained any copies,
16 abstracts, compilations, summaries or any other format reproducing or capturing any
17 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
18 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
19 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
20 reports, attorney work product, and consultant and expert work product, even if such
21 materials contain Protected Material. Any such archival copies that contain or
22 constitute Protected Material remain subject to this Protective Order as set forth in
23 Section 4.

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

IT IS HEREBY ORDERED that the Stipulated Protective Order is GRANTED.

DATED: September 6, 2019

_____/s/_____
Honorable Jacqueline Chooljian
United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Protective Order that was issued
7 by the United States District Court for the Central District of California on
8 September 6, 2019 in the case of Prosource Discounts, Inc. v. Kipp K. Dye, Case
9 No. 2:19-cv-00489-AB-JC. I agree to comply with and to be bound by all the terms
10 of this Protective Order and I understand and acknowledge that failure to so comply
11 could expose me to sanctions and punishment in the nature of contempt. I solemnly
12 promise that I will not disclose in any manner any information or item that is subject
13 to this Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

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

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____