

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DANIEL DIMITROFF, an individual,

Plaintiff(s),

v.

PREVOUNCE HEALTH, INC.;
PREVOUNCE HEALTH, LLC;
SOURCE INDUSTRIES, INC.;
DANIEL
TASHNEK; GARY TASHNEK; and
DOES 1-20, inclusive

Defendant(s).

Case No. 2:22-cv-03808-SB-KS

DISCOVERY MATTER

STIPULATED PROTECTIVE ORDER

I. PURPOSES AND LIMITATIONS

A. 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

1 acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords from
3 public disclosure and use extends only to the limited information or items that
4 are entitled to confidential treatment under the applicable legal principles. The
5 parties further acknowledge, as set forth in Section XIII(C), below, that this
6 Stipulated Protective Order does not entitle them to file confidential information
7 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
8 and the standards that will be applied when a party seeks permission from the
9 Court to file material under seal.

10 **II. GOOD CAUSE STATEMENT**

11 A. This action is likely to involve trade secrets, customer and pricing lists
12 and other valuable research, development, commercial, financial, technical
13 and/or proprietary information for which special protection from public
14 disclosure and from use for any purpose other than prosecution of this action is
15 warranted. Such confidential and proprietary materials and information consist
16 of, among other things, confidential business or financial information,
17 information regarding confidential business practices, or other confidential
18 research, development, or commercial information (including information
19 implicating privacy rights of third parties), information otherwise generally
20 unavailable to the public, or which may be privileged or otherwise protected
21 from disclosure under state or federal statutes, court rules, case decisions, or
22 common law. Accordingly, to expedite the flow of information, to facilitate the
23 prompt resolution of disputes over confidentiality of discovery materials, to
24 adequately protect information the parties are entitled to keep confidential, to

1 ensure that the parties are permitted reasonable necessary uses of such material
2 in preparation for and in the conduct of trial, to address their handling at the
3 end of the litigation, and serve the ends of justice, a protective order for such
4 information is justified in this matter. It is the intent of the parties that
5 information will not be designated as confidential for tactical reasons and that
6 nothing be so designated without a good faith belief that it has been maintained
7 in a confidential, non-public manner, and there is good cause why it should not
8 be part of the public record of this case.

9 **III. DEFINITIONS**

10 A. Action: This pending federal law suit, C.D. Cal. Case No. 2:22-cv-03808-
11 SB-KS

12 B. Challenging Party: A Party or Non-Party that challenges the designation
13 of information or items under this Order.

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

18 D. Counsel: Outside Counsel of Record and House Counsel (as well as their
19 support staff).

20 E. Designating Party: A Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL.”

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

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

9 H. House Counsel: Attorneys who are employees of a party to this Action.
10 House Counsel does not include Outside Counsel of Record or any other outside
11 counsel.

12 I. Non-Party: Any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 J. Outside Counsel of Record: Attorneys who are not employees of a party
15 to this Action but are retained to represent or advise a party to this Action and
16 have appeared in this Action on behalf of that party or are affiliated with a law
17 firm which has appeared on behalf of that party, and includes support staff.

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

21 L. Producing Party: A Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 M. Professional Vendors: Persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or
2 medium) and their employees and subcontractors.

3 N. Protected Material: Any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 O. Receiving Party: A Party that receives Disclosure or Discovery Material
6 from a Producing Party.

7 **IV. SCOPE**

8 A. The protections conferred by this Stipulation and Order cover not only
9 Protected Material (as defined above), but also (1) any information copied or
10 extracted from Protected Material; (2) all copies, excerpts, summaries, or
11 compilations of Protected Material; and (3) any testimony, conversations, or
12 presentations by Parties or their Counsel that might reveal Protected Material.

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

15 **V. DURATION**

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

1 **VI. DESIGNATING PROTECTED MATERIAL**

2 A. Exercise of Restraint and Care in Designating Material for Protection

3 1. Each Party or Non-Party that designates information or items for
4 protection under this Order must take care to limit any such designation
5 to specific material that qualifies under the appropriate standards. The
6 Designating Party must designate for protection only those parts of
7 material, documents, items, or oral or written communications that
8 qualify so that other portions of the material, documents, items, or
9 communications for which protection is not warranted are not swept
10 unjustifiably within the ambit of this Order.

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

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

20 B. Manner and Timing of Designations

21 1. Except as otherwise provided in this Order (*see, e.g.*, Section
22 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
23 Discovery Material that qualifies for protection under this Order must be
24 clearly so designated before the material is disclosed or produced.

1 2. Designation in conformity with this Order requires the following:

2 a. For information in documentary form (e.g., paper or
3 electronic documents, but excluding transcripts of depositions or
4 other pretrial or trial proceedings), that the Producing Party affix
5 at a minimum, the legend “CONFIDENTIAL” (hereinafter
6 “CONFIDENTIAL legend”), to each page that contains protected
7 material. If only a portion or portions of the material on a page
8 qualifies for protection, the Producing Party also must clearly
9 identify the protected portion(s) (e.g., by making appropriate
10 markings in the margins).

11 b. A Party or Non-Party that makes original documents
12 available for inspection need not designate them for protection
13 until after the inspecting Party has indicated which documents it
14 would like copied and produced. During the inspection and before
15 the designation, all of the material made available for inspection
16 shall be deemed “CONFIDENTIAL.” After the inspecting Party has
17 identified the documents it wants copied and produced, the
18 Producing Party must determine which documents, or portions
19 thereof, qualify for protection under this Order. Then, before
20 producing the specified documents, the Producing Party must affix
21 the “CONFIDENTIAL legend” to each page that contains Protected
22 Material. If only a portion or portions of the material on a page
23 qualifies for protection, the Producing Party also must clearly
24

1 identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 c. For testimony given in depositions, that the Designating
4 Party identify the Disclosure or Discovery Material on the record,
5 before the close of the deposition all protected testimony.

6 d. For information produced in form other than document and
7 for any other tangible items, that the Producing Party affix in a
8 prominent place on the exterior of the container or containers in
9 which the information is stored the legend "CONFIDENTIAL." If
10 only a portion or portions of the information warrants protection,
11 the Producing Party, to the extent practicable, shall identify the
12 protected portion(s).

13 C. Inadvertent Failure to Designate

14 1. If timely corrected, an inadvertent failure to designate qualified
15 information or items does not, standing alone, waive the Designating
16 Party's right to secure protection under this Order for such material.

17 Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with
19 the provisions of this Order.

20 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

21 A. Timing of Challenges

22 1. Any party or Non-Party may challenge a designation of
23 confidentiality at any time that is consistent with the Court's Scheduling
24 Order.

1 B. Meet and Confer

2 1. The Challenging Party shall initiate the dispute resolution process
3 under Local Rule 37.1 et seq.

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

12 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 A. Basic Principles

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

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

24 B. Disclosure of "CONFIDENTIAL" Information or Items

1 1. Unless otherwise ordered by the Court or permitted in writing by
2 the Designating Party, a Receiving Party may disclose any information or
3 item designated “CONFIDENTIAL” only to:

4 a. The Receiving Party’s Outside Counsel of Record in this
5 Action, as well as employees of said Outside Counsel of Record to
6 whom it is reasonably necessary to disclose the information for this
7 Action;

8 b. The officers, directors, and employees (including House
9 Counsel) of the Receiving Party to whom disclosure is reasonably
10 necessary for this Action;

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

15 d. The Court and its personnel;

16 e. Court reporters and their staff;

17 f. Professional jury or trial consultants, mock jurors, and
18 Professional Vendors to whom disclosure is reasonably necessary
19 or this Action and who have signed the “Acknowledgment and
20 Agreement to be Bound” attached as Exhibit A hereto;

21 g. The author or recipient of a document containing the
22 information or a custodian or other person who otherwise
23 possessed or knew the information;

24

1 h. During their depositions, witnesses, and attorneys for
2 witnesses, in the Action to whom disclosure is reasonably
3 necessary provided: (i) the deposing party requests that the
4 witness sign the “Acknowledgment and Agreement to Be Bound;”
5 and (ii) they will not be permitted to keep any confidential
6 information unless they sign the “Acknowledgment and Agreement
7 to Be Bound,” unless otherwise agreed by the Designating Party or
8 ordered by the Court. Pages of transcribed deposition testimony or
9 exhibits to depositions that reveal Protected Material may be
10 separately bound by the court reporter and may not be disclosed to
11 anyone except as permitted under this Stipulated Protective Order;
12 and

13 i. Any mediator or settlement officer, and their supporting
14 personnel, mutually agreed upon by any of the parties engaged in
15 settlement discussions.

16 **IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
17 **IN OTHER LITIGATION**

18 A. If a Party is served with a subpoena or a court order issued in other
19 litigation that compels disclosure of any information or items designated in this
20 Action as “CONFIDENTIAL,” that Party must:

- 21 1. Promptly notify in writing the Designating Party. Such notification
22 shall include a copy of the subpoena or court order;
- 23 2. Promptly notify in writing the party who caused the subpoena or
24 order to issue in the other litigation that some or all of the material

1 covered by the subpoena or order is subject to this Protective Order. Such
2 notification shall include a copy of this Stipulated Protective Order; and

3 3. Cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be
5 affected.

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

14 **X. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
15 **PRODUCED IN THIS LITIGATION**

16 A. The terms of this Order are applicable to information produced by a Non-
17 Party in this Action and designated as "CONFIDENTIAL." Such information
18 produced by Non-Parties in connection with this litigation is protected by the
19 remedies and relief provided by this Order. Nothing in these provisions should
20 be construed as prohibiting a Non-Party from seeking additional protections.

21 B. In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party's confidential information in its possession, and the Party
23 is subject to an agreement with the Non-Party not to produce the Non-Party's
24 confidential information, then the Party shall:

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
3 confidentiality agreement with a Non-Party;

4 2. Promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this Action, the relevant discovery request(s), and a
6 reasonably specific 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 the Non-Party fails to seek a protective order from this court within 14
10 days of receiving the notice and accompanying information, the Receiving Party
11 may produce the Non-Party's confidential information responsive to the
12 discovery request. If the Non-Party timely seeks a protective order, the
13 Receiving Party shall not produce any information in its possession or control
14 that is subject to the confidentiality agreement with the Non-Party before a
15 determination by the court. Absent a court order to the contrary, the Non-Party
16 shall bear the burden and expense of seeking protection in this court of its
17 Protected Material.

18 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
20 disclosed Protected Material to any person or in any circumstance not
21 authorized under this Stipulated Protective Order, the Receiving Party must
22 immediately (1) notify in writing the Designating Party of the unauthorized
23 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
24 Protected Material, (3) inform the person or persons to whom unauthorized

1 disclosures were made of all the terms of this Order, and (4) request such person
2 or persons to execute the “Acknowledgment and Agreement to be Bound” that is
3 attached hereto as Exhibit A.

4 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
5 **PROTECTED MATERIAL**

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

16 **XIII. MISCELLANEOUS**

17 A. Right to Further Relief

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

20 B. Right to Assert Other Objections

21 1. By stipulating to the entry of this Protective Order, no Party waives
22 any right it otherwise would have to object to disclosing or producing any
23 information or item on any ground not addressed in this Stipulated
24 Protective Order. Similarly, no Party waives any right to object on any

1 ground to use in evidence of any of the material covered by this Protective
2 Order.

3 C. Filing Protected Material

4 1. A Party that seeks to file under seal any Protected Material must
5 comply with Civil Local Rule 79-5. Protected Material may only be filed
6 under seal pursuant to a court order authorizing the sealing of the specific
7 Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the Court, then the Receiving Party may file the
9 information in the public record unless otherwise instructed by the Court.

10 **XIV. FINAL DISPOSITION**

11 A. After the final disposition of this Action, as defined in Section V, within
12 sixty (60) days of a written request by the Designating Party, each Receiving
13 Party must return all Protected Material to the Producing Party or destroy such
14 material. As used in this subdivision, "all Protected Material" includes all copies,
15 abstracts, compilations, summaries, and any other format reproducing or
16 capturing any of the Protected Material. Whether the Protected Material is
17 returned or destroyed, the Receiving Party must submit a written certification to
18 the Producing Party (and, if not the same person or entity, to the Designating
19 Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
20 all the Protected Material that was returned or destroyed and (2) affirms that the
21 Receiving Party has not retained any copies, abstracts, compilations, summaries
22 or any other format reproducing or capturing any of the Protected Material.

23 Notwithstanding this provision, Counsel are entitled to retain an archival copy of
24 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal

1 memoranda, correspondence, deposition and trial exhibits, expert reports,
2 attorney work product, and consultant and expert work product, even if such
3 materials contain Protected Material. Any such archival copies that contain or
4 constitute Protected Material remain subject to this Protective Order as set forth
5 in Section V.

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

9
10
11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

12 Dated: September 15, 2022 /s/Ashkan Shakouri
13 Attorney(s) for Plaintiff Daniel Dimitroff

14 Dated: September 15, 2022 /s/Graham G. Lambert
15 Attorney(s) for Defendants Prevounce Health,
16 Inc., Prevounce Health, LLC, Source
Industries, Inc., and Gary Tashnek

17 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

18
19 Dated: September 16, 2022 Karen L. Stevenson
20 HONORABLE KAREN L. STEVENSON
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2 I, _____ [print or type full name], of _____
3 _____ [print or type full address], declare under penalty of perjury that I
4 have read in its entirety and understand the Stipulated Protective Order that was issue
5 by the United States District Court for the Central District of California on [DATE] in
6 the case of Daniel Dimitroff v. Prevounce Health, Inc., et al, Case No. 2:22-cv-03808-
7 SB-KS. I agree to comply with and to be bound by all the terms of this Stipulated
8 Protective Order and I understand and acknowledge that failure to so comply could
9 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
10 that I will not disclose in any manner any information or item that is subject to this
11 Stipulated Protective Order to any person or entity except in strict compliance with the
12 provisions of this Order.
13

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 _____ [print or
18 type full name] of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this
20 action or any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed Name: _____

24 Signature: _____