

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  
EASTERN DISTRICT OF CALIFORNIA**

M.D. MARK, INC.,	)	Case No. 1:17-CV-00258-LJO-JLT
	)	
Plaintiff,	)	STIPULATION AND PROTECTIVE ORDER
	)	<b>(Doc. 22)</b>
vs.	)	
	)	
PACSEIS, INC.,	)	
	)	
Defendant.	)	

---

**IT IS HEREBY STIPULATED** by and between plaintiff M.D. Mark, Inc. (“plaintiff”) and defendant PacSeis, Inc. (“defendant”), that in order to facilitate the exchange of information and documents that may be subject to confidentiality limitations on disclosure due to federal laws, state laws, and privacy rights, the Parties stipulate as follows:

1. In this Stipulation and Protective Order, the words set forth below shall have the following meaning:

- a. “Proceeding” means the above-entitled proceeding (1:17-CV-00258-LJO-JLT).
- b. “Court” means the Hon. Jennifer L. Thurston, or any other judge or magistrate to which this Proceeding may be assigned, including Court staff participating in such proceedings.
- c. “Confidential” means any information which is in the possession of a Designating Party who believes in good faith that such information is entitled to confidential

1 treatment under applicable law.

2 d. "Confidential Materials" means any Documents, Testimony, or Information as  
3 defined below designated as "Confidential" pursuant to the provisions of this  
4 Stipulation and Protective Order.

5 e. "Designating Party" means the Party that designates Materials as "Confidential."

6 f. "Disclose" or "Disclosed" or "Disclosure" means to reveal, divulge, give, or make  
7 available Materials, or any part thereof, or any information contained therein.

8 g. "Documents" means (i) any "Writing," "Original," and "Duplicate" as those terms are  
9 defined by California Evidence Code Sections 250, 255, and 260, which have been  
10 produced in this Proceeding by any person, and (ii) any copies, reproductions, or  
11 summaries of all or any part of the foregoing.

12 h. "Information" means the content of Documents or Testimony.

13 i. "Testimony" means all depositions, declarations, or other testimony taken or used in  
14 this Proceeding.

15 2. The Parties acknowledge that formal non-expert discovery has concluded in the  
16 Proceeding; however, the Parties desire to informally exchange Information, Testimony, and /or  
17 Documents through and as part of confidential settlement discussions. This Stipulation and  
18 Protective Order is not intended as a substitute for discovery or the Parties' rights to discovery, nor  
19 to allow the reopening of non-expert discovery. No Information, Testimony, and/or Documents  
20 exchanged through and as part of the settlement discussions shall be admissible unless the same  
21 were discovered through the formal non-expert discovery or were independently discovered by a  
22 Party outside of formal discovery and the confidential settlement discussions.

23 3. The Designating Party shall have the right to designate as "Confidential" any  
24 Documents, Testimony, or Information that the Designating Party in good faith believes to contain  
25 non-public information that is entitled to confidential treatment under applicable law.

26 4. The entry of this Stipulation and Protective Order does not alter, waive, modify, or  
27 abridge any right, privilege or protection otherwise available to any Party with respect to the  
28

1 discovery of matters, including but not limited to any Party's right to assert the attorney-client  
2 privilege, the attorney work product doctrine, or other privileges, or any Party's right to contest any  
3 such assertion.

4 5. The Parties shall endeavor to mark or identify as "Confidential" any Documents,  
5 Testimony, or Information exchanged pursuant to this Stipulation and Protective Order. The  
6 "Confidential" designation should not obscure or interfere with the legibility of the designated  
7 Information or Documents.

8 a. For Documents (apart from transcripts of depositions or other pretrial or trial  
9 proceedings), the Designating Party must affix the legend "Confidential" on each  
10 page of any Document containing such designated Confidential Material.

11 b. For Information produced in some form other than Documents, and for any other  
12 tangible items, including, without limitation, compact discs or DVDs, the Designating  
13 Party must affix in a prominent place on the exterior of the container or containers in  
14 which the Information or item is stored the legend "Confidential." If only portions of  
15 the Information or item warrant protection, the Designating Party, to the extent  
16 practicable, shall identify the "Confidential" portions.

17 6. The inadvertent production by any of the undersigned Parties or non-Parties to the  
18 Proceedings of any Document, Testimony, or Information in this Proceeding without a  
19 "Confidential" designation, shall be without prejudice to any claim that such item is "Confidential"  
20 and such Party shall not be held to have waived any rights by such inadvertent production. In the  
21 event that any Document, Testimony, or Information that is subject to a "Confidential" designation  
22 is inadvertently produced without such designation, the Party that inadvertently produced the  
23 document shall give written notice of such inadvertent production within twenty (20) days of  
24 discovery of the inadvertent production, together with a further copy of the subject Document,  
25 Testimony, or Information designated as "Confidential" (the "Inadvertent Production Notice").  
26 Upon receipt of such Inadvertent Production Notice, the Party that received the inadvertently  
27 produced Document, Testimony, or Information shall promptly destroy the inadvertently produced  
28

1 Document, Testimony, or Information and all copies thereof, or, at the expense of the producing  
2 Party, return such together with all copies of such Document, Testimony, or Information to counsel  
3 for the producing Party and shall retain only the “Confidential” designated Materials. Should the  
4 receiving Party choose to destroy such inadvertently produced Document, Testimony, or  
5 Information, the receiving Party shall notify the producing Party in writing of such destruction  
6 within ten (10) days of receipt of written notice of the inadvertent production. This provision is not  
7 intended to apply to any inadvertent production of any Information protected by attorney-client or  
8 work product privileges. In the event that this provision conflicts with any applicable law regarding  
9 waiver of confidentiality through the inadvertent production of Documents, Testimony, or  
10 Information, such law shall govern.

11 7. In the event that counsel for a Party receiving Documents, Testimony, or Information  
12 designated as “Confidential” objects to such designation with respect to any or all of such items, said  
13 counsel shall advise counsel for the Designating Party, in writing, of such objections, the specific  
14 Documents, Testimony, or Information to which each objection pertains, and the specific reasons  
15 and support for such objections (the “Designation Objections”). Counsel for the Designating Party  
16 shall have thirty (30) days from receipt of the written Designation Objections to either (a) agree in  
17 writing to de-designate Documents, Testimony, or Information pursuant to any or all of the  
18 Designation Objections and/or (b) file a motion with the Court seeking to uphold any or all  
19 designations on Documents, Testimony, or Information addressed by the Designation Objections  
20 (the “Designation Motion”). Pending a resolution of the Designation Motion by the Court, any and  
21 all existing designations on the Documents, Testimony, or Information at issue in such Motion shall  
22 remain in place. The Designating Party shall have the burden on any Designation Motion of  
23 establishing the applicability of its “Confidential” designation. In the event that the Designation  
24 Objections are neither timely agreed to nor timely addressed in the Designation Motion, then such  
25 Documents, Testimony, or Information shall be de-designated in accordance with the Designation  
26 Objection applicable to such material.

27 8. Access to and/or Disclosure of Confidential Materials designated as “Confidential”  
28

1 shall be permitted only to the following persons:

- 2 a. The Court;
- 3 b. (1) Attorneys of record in the Proceedings and their affiliated attorneys, paralegals,  
4 clerical and secretarial staff employed by such attorneys who are actively involved in  
5 the Proceedings and are not employees of any Party. (2) In-house counsel to the  
6 undersigned Parties and the paralegal, clerical and secretarial staff employed by such  
7 counsel. Provided, however, that each non-lawyer given access to Confidential  
8 Materials shall be advised that such Confidential Materials are being Disclosed  
9 pursuant to, and are subject to, the terms of this Stipulation and Protective Order and  
10 that they may not be Disclosed other than pursuant to its terms;
- 11 c. those officers, directors, partners, members, employees and agents of all  
12 nondesignating Parties that counsel for such Parties deems necessary to aid counsel in  
13 settlement discussions in this Proceeding; provided, however, that prior to the  
14 Disclosure of Confidential Materials to any such officer, director, partner, member,  
15 employee or agent, counsel for the Party making the Disclosure shall deliver a copy  
16 of this Stipulation and Protective Order to such person, shall explain that such person  
17 is bound to follow the terms of such Order, and shall secure the signature of such  
18 person on a statement in the form attached hereto as Exhibit A;
- 19 d. outside experts or expert consultants consulted by the undersigned Parties or their  
20 counsel in connection with settlement discussions in the Proceeding, whether or not  
21 retained to testify at any oral hearing; provided, however, that prior to the Disclosure  
22 of Confidential Materials to any such expert or expert consultant, counsel for the  
23 Party making the Disclosure shall deliver a copy of this Stipulation and Protective  
24 Order to such person, shall explain its terms to such person, and shall secure the  
25 signature of such person on a statement in the form attached hereto as Exhibit A. It  
26 shall be the obligation of counsel, upon learning of any breach or threatened breach of  
27 this Stipulation and Protective Order by any such expert or expert consultant, to  
28

1 promptly notify counsel for the Designating Party of such breach or threatened  
2 breach; and

3 e. any other person that the Designating Party agrees to in writing.

4 9. Confidential Materials shall be used by the persons receiving them only for the  
5 purposes of preparing for, conducting, and participating in confidential settlement discussions, and  
6 not for any business, litigation, or other purpose whatsoever.

7 10. Any Party to the Proceeding (or other person subject to the terms of this Stipulation  
8 and Protective Order) may ask the Court, after appropriate notice to the other Parties to the  
9 Proceeding, to modify or grant relief from any provision of this Stipulation and Protective Order.

10 11. Entering into, agreeing to, and/or complying with the terms of this Stipulation and  
11 Protective Order shall not:

12 a. operate as an admission by any person that any particular Document, Testimony, or  
13 Information marked “Confidential: contains or reflects trade secrets, proprietary,  
14 confidential or competitively sensitive business, commercial, financial or personal  
15 information; or

16 b. prejudice in any way the right of any Party (or any other person subject to the terms  
17 of this Stipulation and Protective Order):

18 i. to seek a determination by the Court of whether any particular Confidential  
19 Material should be subject to protection as “Confidential” under the terms of  
20 this Stipulation and Protective Order; or

21 ii. to seek relief from the Court on appropriate notice to all other Parties to the  
22 Proceeding from any provision(s) of this Stipulation and Protective Order, either  
23 generally or as to any particular Document, Testimony, or Information.

24 12. Any Party to the Proceeding who has not executed this Stipulation and Protective  
25 Order as of the time it is presented to the Court for signature may thereafter become a Party to this  
26 Stipulation and Protective Order by its counsel’s signing and dating a copy thereof and filing the  
27 same with the Court, and serving copies of such signed and dated copy upon the other Parties to this  
28

1 Stipulation and Protective Order.

2 13. Any Confidential Materials that may be produced by a non-Party witness in the  
3 Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as  
4 “Confidential” under the terms of this Stipulation and Protective Order, and any such designation by  
5 a non-Party shall have the same force and effect, and create the same duties and obligations, as if  
6 made by one of the undersigned Parties hereto. Any such designation shall also function as a  
7 consent by such producing Party to the authority of the Court in the Proceeding to resolve and  
8 conclusively determine any motion or other application made by any person or Party with respect to  
9 such designation, or any other matter otherwise arising under this Stipulation and Protective Order.

10 14. If any person subject to this Stipulation and Protective Order who has custody of any  
11 Confidential Materials receives a subpoena or other process (“Subpoena”) from any government or  
12 other person or entity demanding production of Confidential Materials, the recipient of the Subpoena  
13 shall promptly give notice of the same by electronic mail transmission, followed by either express  
14 mail or overnight delivery to counsel of record for the Designating Party, and shall furnish such  
15 counsel with a copy of the Subpoena. Upon receipt of this notice, the Designating Party may, in its  
16 sole discretion and at its own cost, move to quash or limit the Subpoena, otherwise oppose  
17 production of the Confidential Materials, and/or seek to obtain confidential treatment of such  
18 Confidential Materials from the subpoenaing person or entity to the fullest extent available under  
19 law. The recipient of the Subpoena may not produce any Documents, Testimony, or Information  
20 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

21 15. Nothing in this Stipulation and Protective Order shall be construed to preclude either  
22 Party from asserting in good faith that certain Confidential Materials require additional protection.  
23 The Parties shall meet and confer to agree upon the terms of such additional protection.

24 16. If, after execution of this Stipulation and Protective Order, any Confidential Materials  
25 submitted by a Designating Party under the terms of this Stipulation and Protective Order is  
26 Disclosed by a non-Designating Party to any person other than in the manner authorized by this  
27 Stipulation and Protective Order, the non-Designating Party responsible for the Disclosure shall  
28

1 bring all pertinent facts relating to the Disclosure of such Confidential Materials to the immediate  
2 attention of the Designating Party.

3 17. This Stipulation and Protective Order is entered into without prejudice to the right of  
4 any Party to knowingly waive the applicability of this Stipulation and Protective Order to any  
5 Confidential Materials designated by that Party. If the Designating Party uses Confidential Materials  
6 in a non-Confidential manner, then the Designating Party shall advise that the designation no longer  
7 applies.

8 18. Without written permission from the Designating Party or a court order secured after  
9 appropriate notice to all interested persons and compliance with the scheduling order and/or Local  
10 Rule 141, a Party receiving Confidential Materials may not file in the public record in this action any  
11 Confidential Materials.

12 19. The Parties shall meet and confer regarding the procedures for use of Confidential  
13 Materials at trial and shall move the Court for entry of an appropriate order.

14 20. This Stipulation and Protective Order shall continue to be binding after the conclusion  
15 of this Proceeding and all subsequent proceedings arising from this Proceeding, except that a Party  
16 may seek the written permission of the Designating Party or may move the Court for relief from the  
17 provisions of this Stipulation and Protective Order. To the extent permitted by law, the Court shall  
18 retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective Order, even after  
19 the Proceeding is terminated.

20 21. Within thirty (30) days after the settlement or other termination of the Proceeding, the  
21 undersigned Parties shall have thirty (30) days to either (a) promptly return to counsel for each  
22 Designating Party all Confidential Materials and all copies thereof (except that counsel for each  
23 Party may maintain in its files, in continuing compliance with the terms of this Stipulation and  
24 Protective Order, all work product, and one copy of each pleading filed with the Court, (b) agree  
25 with counsel for the Designating Party upon appropriate methods and certification of destruction or  
26 other disposition of such Confidential Materials, or (c) as to any Documents, Testimony, or other  
27 Information not addressed by subparagraphs (a) and (b), file a motion seeking a Court order  
28



1 regarding proper preservation of such Confidential Materials. To the extent permitted by law the  
2 Court shall retain continuing jurisdiction to review and rule upon the motion referred to in sub-  
3 paragraph (c) herein.

4 22. After this Stipulation and Protective Order has been signed by counsel for all Parties,  
5 it shall be presented to the Court for entry. Counsel agree to be bound by the terms set forth herein  
6 with regard to any Confidential Materials that have been produced before the Court signs this  
7 Stipulation and Protective Order.

8 23. The Parties and all signatories to the Certification attached hereto as Exhibit A agree  
9 to be bound by this Stipulation and Protective Order pending its approval and entry by the Court. In  
10 the event that the Court modifies this Stipulation and Protective Order, or in the event that the Court  
11 enters a different Protective Order, the Parties agree to be bound by this Stipulation and Protective  
12 Order until such time as the Court may enter such a different Order. It is the Parties' intent to be  
13 bound by the terms of this Stipulation and Protective Order pending its entry so as to allow for  
14 immediate production of Confidential Materials under the terms herein.

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

18 This Stipulation and Protective Order may be executed in counterparts.

19 DATED: September \_\_, 2017

ALEXANDER & ASSOCIATES, PLC

20 By: \_\_\_\_\_

21 WILLIAM L. ALEXANDER  
22 Attorneys for Defendants

23 DATED: September \_\_, 2017

NEMKOV & BONIFAVI, PLLC

24 By: \_\_\_\_\_

25 DAN BONIFAZI  
26 Attorneys for Plaintiff

27 DATED: September \_\_, 2017

RICHARD A. NERVIG, P.C.

28 By: \_\_\_\_\_

RICHARD A. NERVIG  
Attorneys for Plaintiff

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

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

**ORDER**

**GOOD CAUSE APPEARING**, the Court hereby approves the Stipulation for Protective Order as **modified by the Court in paragraph 18.**

IT IS SO ORDERED.

Dated: October 16, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 CERTIFICATION RE CONFIDENTIAL MATERIALS

3 I hereby acknowledge that I, \_\_\_\_\_ [NAME], \_\_\_\_\_  
4 [POSITION AND EMPLOYER], am about to receive Confidential Materials supplied in connection  
5 with the Proceeding, Case No. 1:17-CV-00258-LJO-JLT. I understand that the “Confidential  
6 Materials,” as defined in the Stipulation and Protective Order (“Protective Order”), are provided to  
7 me subject to the terms and restrictions of the Protective Order filed in this Proceeding. I have been  
8 given a copy of the Protective Order; I have read it, and I agree to be bound by its terms. I  
9 understand that Confidential Materials, including any notes or other records that may be made  
10 regarding any such materials, shall not be Disclosed to anyone except as expressly permitted by the  
11 Protective Order. I will not copy or use, except solely for the purposes of this Proceeding, any  
12 Confidential Materials obtained pursuant to this Protective Order, except as provided therein or  
13 otherwise ordered by the Court. I understand that I am to retain all copies of all Confidential  
14 Materials provided to me in the Proceeding in a secure manner, and that all copies are to remain in  
15 my personal custody until termination of my participation in this Proceeding, whereupon the copies  
16 of such Confidential Materials will be returned to counsel who provided me with such Materials.

17 I declare under penalty of perjury, under the laws of the State of California, that the  
18 foregoing is true and correct. Executed this \_\_\_\_ day of \_\_\_\_\_, 2017, at \_\_\_\_\_.

19 DATED: \_\_\_\_\_

BY: \_\_\_\_\_

20 Signature

21 \_\_\_\_\_  
22 Title

23 \_\_\_\_\_  
24 Address

25 \_\_\_\_\_  
26 City, State, Zip

27 \_\_\_\_\_  
28 Telephone Number