

1 EDMUND G. BROWN, JR.  
Attorney General of California  
2 JANICE K. LACHMAN, SBN 186131  
Supervising Deputy Attorney General  
3 JOHN PADRICK, SBN 155123  
Deputy Attorney General  
4 1300 I Street, Suite 125  
P.O. Box 944255  
5 Sacramento, CA 94244-2500  
Telephone: (916) 323-6708  
6 Facsimile: (916) 327-8643  
[John.Padrick@doj.ca.gov](mailto:John.Padrick@doj.ca.gov)

7 Attorneys for State of California, Department of Consumer Affairs

8 JENNIFER L. DAUER, SBN 179262  
9 DIEPENBROCK HARRISON, a Professional Corporation  
400 Capitol Mall, Suite 1800  
10 Sacramento, CA 95814-4413  
Telephone: (916) 492-5000  
11 Facsimile: (916) 446-4535  
[jdauer@diepenbrock.com](mailto:jdauer@diepenbrock.com)

12 Attorneys for Defendant, Compass Vision, Inc.

13 NORMAN PERLBERGER  
14 POMERANTZ PERLBERGER & LEWIS, LLP  
One Presidential Blvd., Suite 315  
15 Bala Cynwyd, PA 19004  
Telephone: (610) 664-3222  
16 [nperlberger@ppl-law.com](mailto:nperlberger@ppl-law.com)

17 STEVEN S. KANE, SBN 061670  
THE KANE LAW FIRM  
18 402 W. Broadway, Suite 860  
San Diego, CA 92101  
19 Telephone: (619) 338-0660  
Facsimile: (619) 338-0668  
20 [skane@thekanelawfirm.com](mailto:skane@thekanelawfirm.com)

21 Attorneys for Plaintiffs

22 JEREMY A. MEIER, SBN 139849  
THOMAS A. WOODS, SBN 210050  
23 GREENBERG TRAUIG, LLP  
1201 Ka Street, Suite 1100  
24 Sacramento, CA 95814  
Telephone: (916) 442-1111  
25 Facsimile: (916) 448-1709  
[MeierJ@gtlaw.com](mailto:MeierJ@gtlaw.com)  
26 [WoodsTo@gtlaw.com](mailto:WoodsTo@gtlaw.com)

27 Attorneys for Third-Party Defendant / Counterclaimant Maximus, Inc.

28

1 MARK BRANDON, SBN 110245  
2 BRANDON AND ASSOCIATES  
3 3695 Third Avenue  
4 San Diego, CA 92103  
5 Telephone: (619) 295-9595  
6 Facsimile: (619) 295-2575  
7 [mbrandon@brandon-law.com](mailto:mbrandon@brandon-law.com)

8 DAVID BEACH, SBN 127135  
9 PERRY, JOHNSON, ANDERSON, MILLER & MOSKOWITZ  
10 438 First Street, 4<sup>th</sup> Floor  
11 Santa Rosa, CA 95402  
12 Telephone: (707) 525-8800  
13 Facsimile: (707) 545-8242  
14 [beach@perrylaw.net](mailto:beach@perrylaw.net)

15 Attorneys for Defendant National Medical Services, Inc. dba NMS Labs

16 **UNITED STATES DISTRICT COURT**  
17 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

18 LESLIE BYRUM, et al., ) MC S-09-0110-MCE-GGH  
19 Plaintiffs, ) Northern Dist. Case #09-cv-02016-BZ

20 v. ) **STIPULATED PROTECTIVE**  
21 ) **ORDER**

22 COMPASS VISION, INC., et al., )  
23 Defendants. )

24 LAURA FUJISAWA, et al., ) MC S-09-0111-MCE-GGH  
25 Plaintiffs, ) Northern Dist. Case #07-cv-05642-BZ

26 v. )  
27 COMPASS VISION, INC., et al. )  
28 Defendants. )

29 LORIE GARLICK, ) MC S-09-0112-MCE-GGH  
30 Plaintiff. ) Northern Dist. Case #08-cv-04118-BZ

31 v. )  
32 COMPASS VISION, INC., et al. )  
33 Defendants. )

1 DEBORAH JEAN SMITH, et al.,  
2 Plaintiffs,  
3 v.  
4 COMPASS VISION, INC., et al.  
5 Defendants.

MC S-09-0113-MCE-GGH  
So. Dist. Case #08-cv-01684-BEN-AJB

6 \_\_\_\_\_  
7 MAGDA GONZALEZ, et al.,  
8 Plaintiffs,  
9 v.  
10 COMPASS VISION, INC., et al.  
11 Defendants.

MC S-09-114-MCE-GGH  
So. Dist. Case #07-cv-1951-BEN-AJB

12 The State of California, Department of Consumer Affairs (“DCA”), on behalf of the  
13 Board of Registered Nursing (“BRN”) and Board of Pharmacy, (“BPH”), brought a motion for  
14 protective order to protect certain documents and testimony related to the BRN Diversion  
15 Program and the BPH Pharmacists’ Recovery Program (“PRP”) from production and deposition.  
16 The actions pertaining only the BRN Diversion Program are numbered 09-110 and 09-113. The  
17 action pertaining only to the PRP is numbered 09-112. The actions pertaining to both the BRN  
18 Diversion Program and the PRP are numbered 09-0111 and 09-114. Following DCA’s Motion  
19 for Protective Order, heard January 21, 2010, and Judge Hollows’ February 2, 2010 Order  
20 thereon denying the motion, DCA submitted the matter for reconsideration before Judge  
21 England, currently set for hearing on March 11, 2010. The parties below, through counsel, have  
22 resolved this discovery dispute through stipulation, and good cause appears for the following  
23 order:

24 IT IS HEREBY ORDERED that the following Stipulated Protective Order apply to  
25 production of documents, depositions, declarations, or other pre-trial testimony in the above a  
26 actions, thereby resolving the current dispute, and DCA’s motion for reconsideration is  
27 withdrawn with prejudice:

28 ///

1        1.        **Definitions.**

2                “Confidential Document” is a document that bears the stamp or legend “Confidential:  
3        Subject to Protective Order” and which contains Confidential Information. There shall be no  
4        restrictions on the use of a Confidential Document within the subject litigation, except as may  
5        be imposed expressly herein or by the court before which the underlying action is pending.

6                “Confidential Information” is information lawfully entitled to confidential treatment  
7        under California law, including without limitation, trade secrets and/or proprietary information,  
8        financial information, medical information, and other personal information. For purposes of this  
9        Protective Order, “Confidential Information” also includes information and records which are  
10       not public records, if that information or record was developed by or for, or submitted to, DCA’s  
11       BRN or BPH in connection with a diversion, recovery and/or probation monitoring program  
12       pursuant to California Business and Professions Code sections 2770 *et seq.* or 4360 *et seq.*  
13       Documents and records relating to BRN’s or BPH’s diversion, recovery or probation monitoring  
14       programs held in accordance with Business and Professions Code section 156.1 shall be deemed  
15       to contain Confidential Information for purposes of this Protective Order. To the extent that  
16       information which would otherwise be Confidential Information has been publicly disclosed, it  
17       shall generally not be considered Confidential Information under this Protective Order (except  
18       to the extent any Designating Party objects or files a motion pursuant to the terms of this order).

19                “Designating Party” means the party who produces documents and marks them as  
20        “Confidential: Subject to Protective Order.”

21                “Disclosing Party” is a Party who further produces a document marked as confidential  
22        in accordance with this Protective Order.

23                “Document” means “writings” as defined in California Evidence Code section 250, and  
24        shall include deposition transcripts, declarations, or other pre-trial testimony.

25                “Party” or Parties” to this Protective Order include: all named Plaintiffs, Defendants  
26        Compass Vision, Inc. (“Compass”) and National Medical Services, Inc. dba NMS Labs  
27        (“NMS”), third party-defendant MAXIMUS, Inc. (“MAXIMUS”), and non-party DCA and the  
28        Boards of Nursing and Pharmacy.

1     **2. Confidential Documents and Information.**

2             **2.1**     The Designating Party may mark any document, deposition transcript, declaration,  
3 or other pre-trial testimony which it believes contains Confidential Information as “Confidential:  
4 Subject to Protective Order.” Testimony recorded by a court reporter may be designated as  
5 confidential by making a statement to that effect on the record at the deposition or other  
6 proceedings, or by marking the appropriate portion of the transcript as “Confidential: Subject to  
7 Protective Order” within ten (10) days after the date the transcript of the testimony is available.  
8 The document, deposition transcript, declaration, or other pre-trial testimony so marked shall be  
9 considered confidential and may not be used outside of the instant actions unless 1) challenge  
10 is made to the designation and no motion to protect the information is filed, as provided below,  
11 or 2) the designation is withdrawn. A Designating Party may withdraw the designation of a  
12 document, deposition transcript, declaration, or other pre-trial testimony as confidential by  
13 circulating among the Parties a copy of the document, deposition transcript, declaration, or other  
14 pre-trial testimony without the marking “Confidential: Subject to Protective Order” with written  
15 acknowledgment that the designation has been withdrawn.

16             **2.2**     Within five (5) court days of receipt of a document, deposition transcript,  
17 declaration, or other pre-trial testimony designated as confidential under this Protective Order,  
18 any Party may provide the Designating Party with a written objection that lists the documents,  
19 deposition transcripts, declarations, or other pre-trial testimony which the receiving party seeks  
20 to have precluded from the Protective Order. If the document, deposition transcript, declaration,  
21 or other pre-trial testimony arguably is not a public record and covered by California Business  
22 and Professions Code sections 156.1, 2770 *et seq.* or 4360 *et seq.*, then the objecting Party must  
23 also provide notice of its objection to DCA by first class and certified mail to the attention of the  
24 Executive Officer of BRN and/or BPH (whichever is applicable) with a copy via first class and  
25 certified mail to the DCA’s Legal Affairs Division at 1625 N. Market Blvd., Suite S-309,  
26 Sacramento, CA 95834.

27     ///

28     ///

1           **2.3**     Within ten (10) court days of receipt of an objection to a designation of a  
2 document, deposition transcript, declaration, or other pre-trial testimony as confidential, the  
3 Designating Party or DCA (subject to limitations below) shall have the right to file a motion  
4 with the court in which the underlying action is pending to determine whether the document,  
5 deposition transcript, declaration, or other pre-trial testimony is lawfully entitled to confidential  
6 treatment under California law. DCA shall have the right to file such a motion only if DCA  
7 asserts that the document is subject to this Protective Order as a diversion and/or recovery  
8 program record, or that the deposition or pretrial testimony discloses information that would  
9 otherwise be protected as a diversion and/or recovery program record. If such a motion is filed,  
10 the documents, deposition transcripts, declarations, and/or other pre-trial testimony shall be  
11 treated as Confidential Documents unless and until a final ruling to the contrary is obtained by  
12 the District Court in which the motion has been made, including the expiration of any period in  
13 which a Party may request reconsideration of any decision. This Order does not change or affect  
14 the burden by which the proponent of confidentiality must establish its entitlement to  
15 confidential treatment. No Party will seek any delay of the underlying litigation and no  
16 document will be withheld or testimony refused because of the intent to file or the actual filing  
17 of a motion seeking to establish confidentiality.

18           **2.4**     The failure of a Designating Party to file a timely motion shall result in the  
19 document, deposition transcript, declaration, or other pre-trial testimony to which an objection  
20 has timely been stated no longer being subject to this Protective Order.

21           **2.5**     Documents, deposition transcripts, declarations, or other pre-trial testimony  
22 containing Confidential Information must be filed in redacted form and/or pursuant to an  
23 application to seal. In the pending actions, the Parties acknowledge that nothing will be accepted  
24 for filing under seal with the Court without separate prior order by the judge before whom the  
25 hearing or proceeding will take place. Such order must be sought in accordance with Northern  
26 District Local Rule 79-5 or, in the Southern District, by *ex parte* application by the Party filing  
27 the document, deposition transcript, declaration, or other pre-trial testimony, with appropriate  
28 notice to opposing counsel in accordance with Judge Battaglia's Civil Case Procedures.

1 **3. Persons to Whom Confidential Documents, Deposition Transcripts, Declarations,**  
2 **or Other Pre-Trial Testimony May be Disclosed.**

3 **3.1** Confidential Documents and Information, and any derivative documents,  
4 deposition transcripts, declarations, or other pre-trial testimony based on the Confidential  
5 Information, may only be used in connection with the above-captioned actions, as that use may  
6 be further limited by the orders of the District Court before which the action is pending.

7 **3.2** No Confidential Document or Information may be disclosed to any person  
8 without the prior, written consent of the Designating Party, *except that* the following persons are  
9 authorized to receive Confidential Documents and Information:

10 **3.2.1** Counsel for the Parties, including, but not limited to, attorneys and  
11 employees of such counsel's law firms, to the extent reasonably necessary  
12 to render professional services in connection with the above-captioned  
13 actions;

14 **3.2.2** Parties, only to the extent necessary for such Parties to see Confidential  
15 Documents for the purposes of the above-captioned actions;

16 **3.2.3** Third party contractors (and their employees) involved in the organizing,  
17 filing, coding, converting, storing, or retrieving data or designing  
18 programs for handling data connected with the above-captioned actions,  
19 including the performance of such duties in relation to a computerized  
20 litigation support system;

21 **3.2.4** Other persons not covered by Paragraphs 3.2.1 through 3.2.3 above, who  
22 are employed by a Party or their attorneys of record to assist in the  
23 preparation of the above-captioned actions for trial, such as independent  
24 experts and consultants, and the employees of such experts and  
25 consultants.

26 ///

27 ///

28 ///

1           **3.2.5** Court officials and personnel involved in the above-captioned actions,  
2           including without limitation judges, clerks, the trier-of-fact, including a  
3           jury panel, in the trial of the underlying actions, court reporters, persons  
4           operating video recording equipment at depositions, and any special  
5           master or referee appointed by the Court;

6  
7           **3.2.6** Witnesses at deposition;

8           **3.2.7** Any other person designed by the Northern District or Southern District  
9           Courts in the interest of justice, and on such terms that the Court may  
10          deem just and proper.

11          **3.3** Before any Confidential Document or Information may be disclosed to persons  
12          described in Paragraphs 3.2.2 through 3.2.4 and 3.2.6 above, the Disclosing Party shall provide  
13          each person to whom such Confidential Documents and Information will be disclosed with a  
14          copy of this Protective Order and shall require the person receiving the Confidential Document  
15          or Information to sign a written certification that 1) s/he has received and read the Protective  
16          Order; 2) that s/he understands and will abide by its terms; and 3) that s/he consents to the  
17          exercise of personal jurisdiction by the Northern or Southern District Court, as appropriate, with  
18          respect to any dispute concerning an alleged violation of this Protective Order. The Disclosing  
19          Party shall maintain such written certifications and product the relevant certifications in  
20          connection with any motion filed to enforce this Protective Order.

21          **4.      Obligations On Termination of the Underlying Actions.**

22          **4.1** At the conclusion of the above-captioned action in which the Confidential  
23          Documents or Information were produced, including the resolution of any appeal or expiration  
24          of any period in which an appeal may be filed, all Confidential Documents shall be returned to  
25          counsel of record for the Designating Party or destroyed (at the option of the party in possession  
26          of the Confidential Documents). All other documents, deposition transcripts, declarations, or  
27          other pre-trial testimony that reveal Confidential Information, including copies, excerpts, or  
28          summaries, shall be destroyed.



1           **4.2** All obligations and duties arising under this Protective Order shall survive the  
2 termination of the above-captioned actions and, in addition, shall be binding upon the Parties  
3 (including their successors and assigns, whether in whole or in part, and their affiliates,  
4 subsidiaries, their officers, agents, representatives and employees) and any individual to whom  
5 Confidential Documents or Information was disclosed hereunder.

6           **4.3** This Court shall retain jurisdiction only with respect to enforcement of this Order  
7 if violated. Any dispute regarding the improper use of Confidential Documents or Information  
8 released under this Order, and to enter further Orders respecting Confidential Information, as  
9 may be necessary will be in the jurisdiction of the Court in the underlying litigation:

10 Dated: March 24, 2010

Respectfully submitted,

EDMUND G. BROWN, JR.  
Attorney General of California  
JANICE K. LACHMAN  
Supervising Deputy Attorney General

*/s/ John Padrick*  
\_\_\_\_\_  
John Padrick  
Deputy Attorney General  
Attorney for State of California, Department  
Of Consumer Affairs

17 Dated: March 24, 2010

DIEPENBROCK HARRISON

*/s/ Jennifer L. Dauer*  
\_\_\_\_\_  
Jennifer L. Dauer  
Attorney for Compass Vision, Inc.

21 Dated: March 24 , 2010

POMERANTZ PERLBERGER & LEWIS LLP

*/s/ Norman Perlberger*  
\_\_\_\_\_  
Norman Perlberger  
Attorney pro hac vice for Plaintiffs

25 Dated: March 24, 2010

THE KANE LAW FIRM

*/s/ Steven S. Kane*  
\_\_\_\_\_  
Steven S. Kane  
Attorney for Plaintiffs

1 Dated: March 24, 2010

GREENBERG TRAURIG, LLP

2 */s/ Jeremy A. Meier*

3 Jeremy A. Meier  
4 Attorney for Third-Party Defendant/  
5 Counterclaimant MAXIMUS, Inc.

6  
7 Dated: March 24, 2010

BRANDON AND ASSOCIATES

8 */s/ Mark Brandon*

9 Mark Brandon  
10 Attorney for Defendant NMS, Inc.

11 Dated: March 24, 2010

PERRY JOHNSON ANDERSON MILLER &  
12 MOSKOWITZ

13 */s/ David Beach*

14 David Beach  
15 Attorney for Defendant NMS, Inc.

16  
17 **ORDER**

18  
19 Good cause appearing, the foregoing Stipulated Protective Order applies to production  
20 of documents, depositions, declarations, or other pre-trial testimony in the above actions.  
21 DCA's Motion for Reconsideration (Docket No. 21) is withdrawn with prejudice as moot.

22 Dated: March 25, 2010

23 

24 MORRISON C. ENGLAND, JR.  
25 UNITED STATES DISTRICT JUDGE