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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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

14 v.) **STIPULATED PROTECTIVE**
15 COMPASS VISION, INC., et al.,) **ORDER**

16 Defendants.)

17 _____)
18 LAURA FUJISAWA, et al.,) MC S-09-0111-MCE-GGH
19 Plaintiffs,) Northern Dist. Case #07-cv-05642-BZ

20 v.)
21 COMPASS VISION, INC., et al.)

22 Defendants.)

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

25 v.)
26 COMPASS VISION, INC., et al.)

27 Defendants.)
28 _____)

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27 withdrawn with prejudice:

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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.

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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.

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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;

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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.

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17 **ORDER**

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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

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