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12 MEDICAL SOLUTIONS, LLC

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15

16 BRYON DITTMAN, an individual
on behalf of himself and others
similarly situated

17 Plaintiff,

18 v.

19 MEDICAL SOLUTIONS, L.L.C.;
and DOES 1 to 10 inclusive,

20 Defendants
21

Case No. 2:17-cv-01851-MCE-CKD

**STIPULATION AND PROTECTIVE
ORDER**

22 **PURPOSE AND GOOD CAUSE FOR PROTECTIVE ORDER**
23

24 Disclosure and discovery activity in this action are likely to involve the
25 production of confidential, proprietary, or private information for which special
26 protection from public disclosure and from use for any purpose other than
27 prosecuting this litigation may be warranted. Pursuant to Local Rule 141.1(c)(1),
28 the types of information eligible for protection in this action includes customer and

1 pricing lists and other valuable research, development, commercial, financial,
2 technical and/or other proprietary information. Such confidential and proprietary
3 Materials and information consists of, among other things, confidential business or
4 financial information, information regarding confidential business practices, or
5 other confidential, development, or commercial information (including information
6 implicating privacy rights of third parties), information otherwise generally
7 unavailable to the public, or which may be privileged or otherwise protected from
8 disclosure under state or federal statutes, court rules, case decisions, or common
9 law.

10 Pursuant to Local Rule 141.1(c)(2), there is a need to protect this type of
11 evidence. A party's trade secret, confidential, competitive, or proprietary
12 information could be abused if its use were not limited to this lawsuit. For
13 example, third party competitors could exploit confidential information to their
14 advantage were it made public. In some cases, disclosure of this type of evidence
15 could breach confidentiality agreements or violate privacy or consumer protection
16 laws.

17 Pursuant to Local Rule 141.1(c)(3), the parties seek a Protective Order, as
18 opposed to entering into a private agreement, because the proposed Order provides
19 mechanisms for the resolution of disputes and the handling of designated evidence
20 that involve the Court. Therefore, to expedite the flow of information, to facilitate
21 the prompt resolution of disputes over confidentiality of discovery materials, to
22 adequately protect information the parties are entitled to keep confidential, to
23 ensure that the parties are permitted reasonable necessary uses of such material in
24 preparation for and in the conduct of trial, to address their handling at the end of the
25 litigation, and to serve the ends of justice, there is good cause for a protective order
26 for such information. It is the intent of the parties that information will not be
27 designated as confidential for tactical reasons and that nothing be so designated
28 without a good faith belief that it has been maintained in a confidential, non-public

1 manner, and there is good cause why it should not be part of the public record of
2 this case.

3 Accordingly, the parties hereby stipulate to and petition the court to enter the
4 following Stipulated Protective Order (“Order”). The parties have agreed to be
5 bound by the terms of this Order in this action.

6 **DEFINITIONS**

7 1. The term “Confidential Information” will mean and include
8 information contained or disclosed in any materials, including documents, portions
9 of documents, answers to interrogatories, responses to requests for admissions, trial
10 testimony, deposition testimony, and transcripts of trial testimony and depositions,
11 including data, summaries, and compilations derived therefrom that is deemed to be
12 Confidential Information by any party to which it belongs.

13 2. The term “Materials” will include all documents, electronically stored
14 information, and tangible things, including but not limited to: correspondence;
15 memoranda; bulletins; blueprints; specifications; customer lists or other material
16 that identify customers or potential customers; price lists or schedules or other
17 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
18 contracts; invoices; drafts; books of account; worksheets; notes of conversations;
19 desk diaries; appointment books; expense accounts; recordings; photographs;
20 motion pictures; compilations from which information can be obtained and
21 translated into reasonably usable form through detection devices; sketches;
22 drawings; notes (including laboratory notebooks and records); reports; instructions;
23 disclosures; other writings; models and prototypes and other physical objects.

24 3. The term “Counsel” will mean Plaintiff and Defendant’s respective
25 outside counsel of record, including all attorneys, paralegals, secretaries, and other
26 support staff in their employ, and in-house attorneys for Defendant Medical
27 Solutions, LLC.

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1 **GENERAL RULES**

2 4. Each party to this litigation that produces or discloses any Materials,
3 answers to interrogatories, responses to requests for admission, trial testimony,
4 deposition testimony, and transcripts of trial testimony and depositions, or
5 information that the producing party believes should be subject to this Protective
6 Order may designate the same as “CONFIDENTIAL.” Any party may designate
7 information as “CONFIDENTIAL” if, in the good faith belief of such party and its
8 Counsel, the unrestricted disclosure of such information could be potentially
9 prejudicial to the business or operations of such party.

10 5. Whenever a deposition taken on behalf of any party involves a
11 disclosure of Confidential Information of any party:

12 (a) the deposition or portions of the deposition must be designated as
13 containing Confidential Information subject to the provisions of this Order; such
14 designation must be made on the record whenever possible, but a party may
15 designate portions of depositions as containing Confidential Information after
16 transcription of the proceedings; a party will have until fourteen (14) days after
17 receipt of the deposition transcript to inform the other party or parties to the action
18 of the portions of the transcript to be designated “CONFIDENTIAL.”

19 (b) the disclosing party will have the right to exclude from attendance at
20 the deposition, during such time as the Confidential Information is to be disclosed,
21 any person other than the deponent, Counsel (including their staff and associates),
22 the court reporter, and the person(s) agreed upon pursuant to paragraph 7 below;
23 and

24 (c) the originals of the deposition transcripts and all copies of the
25 deposition must bear the legend “CONFIDENTIAL” as appropriate, and the
26 original or any copy ultimately presented to a court for filing must not be filed
27 unless it can be accomplished under seal, identified as being subject to this Order,
28 and protected from being opened except by order of this Court.

1 6. All Confidential Information designated as “CONFIDENTIAL” must
2 not be disclosed by the receiving party to anyone other than those persons
3 designated within this Order and must be handled in the manner set forth below
4 and, in any event, must not be used for any purpose other than in connection with
5 this litigation, unless and until such designation is removed either by agreement of
6 the parties, or by order of the Court.

7 7. Information designated “CONFIDENTIAL” must be viewed only by
8 Counsel (as defined in paragraph 3) of the receiving party, by independent experts,
9 and by the additional individuals listed below, provided each such individual has
10 read this Order in advance of disclosure and has agreed in writing to be bound by
11 its terms by signing the “Agreement to Be Bound by Protective Order,” attached
12 hereto as Exhibit A:

13 (a) Executives who are required to participate in policy decisions with
14 reference to this action;

15 (b) Technical personnel of the parties with whom Counsel for the parties
16 find it necessary to consult, in the discretion of such Counsel, in preparation for
17 trial of this action; and

18 (c) Stenographic and clerical employees associated with the individuals
19 identified above.

20 8. With respect to material designated “CONFIDENTIAL,” any person
21 indicated on the face of the document to be its originator, author or a recipient of a
22 copy of the document, may be shown the same.

23 9. All information which has been designated as “CONFIDENTIAL” by
24 the producing or disclosing party, and any and all reproductions of that information,
25 must be retained in the custody of the Counsel for the receiving party identified in
26 paragraph 3, except that independent experts authorized to view such information
27 under the terms of this Order may retain custody of copies such as are necessary for
28 their participation in this litigation.

1 10. Before any Materials produced in discovery, answers to
2 interrogatories, responses to requests for admissions, deposition transcripts, or other
3 documents which are designated as Confidential Information are filed with the
4 Court for any purpose, the party seeking to file such material must give the
5 designating party at least fourteen (14) calendar days' notice of its intent to file. If
6 the designating party objects, the designating party shall notify the receiving party
7 and seek permission of the Court to allow the receiving party to file the material
8 under seal pursuant to Local Rule 141. After notice from the designating party of
9 its objection, the receiving party shall provide the designating party a copy of any
10 proposed brief or other paper that includes the specific reference to (or quote from)
11 the designated Material at least five (5) calendar days before the filing deadline so
12 that the designated party can present those papers to the Court with its application
13 to seal. If the designating party fails to seek such permission from the Court or if
14 the Court does not grant the designating party's application to allow the receiving
15 party to file the material under seal by 5 p.m. Pacific Time on the day of filing, the
16 receiving party may proceed to file the material with the Court not under seal.

17 11. At any stage of these proceedings, any party may object to a
18 designation of the Materials as Confidential Information. The party objecting to
19 confidentiality must notify, in writing, Counsel for the designating party of the
20 objected-to Materials and the grounds for the objection. If the dispute is not
21 resolved consensually between the parties within ten (10) days of receipt of such a
22 notice of objections, the objecting party may move the Court for a ruling on the
23 objection. The Materials at issue must be treated as Confidential Information, as
24 designated by the designating party, until the Court has ruled on the objection or the
25 matter has been otherwise resolved.

26 12. All Confidential Information must be held in confidence by those
27 inspecting or receiving it, and must be used only for purposes of this action.
28 Counsel for each party, and each person receiving Confidential Information must

1 take reasonable precautions to prevent the unauthorized or inadvertent disclosure of
2 such information. If Confidential Information is disclosed to any person other than
3 a person authorized by this Order, the party responsible for the unauthorized
4 disclosure must immediately bring all pertinent facts relating to the unauthorized
5 disclosure to the attention of the other parties and, without prejudice to any rights
6 and remedies of the other parties, make every effort to prevent further disclosure by
7 the party and by the person(s) receiving the unauthorized disclosure.

8 13. No party will be responsible to another party for disclosure of
9 Confidential Information under this Order if the information in question is not
10 labeled or otherwise identified as such in accordance with this Order.

11 14. If a party, through inadvertence, produces any Confidential
12 Information without labeling or marking or otherwise designating it as such in
13 accordance with this Order, the designating party may give written notice to the
14 receiving party that the document or thing produced is deemed Confidential
15 Information, and that the document or thing produced should be treated as such in
16 accordance with that designation under this Order. The receiving party must treat
17 the Materials as confidential, once the designating party so notifies the receiving
18 party. If the receiving party has disclosed the Materials before receiving the
19 designation, the receiving party must notify the designating party in writing of each
20 such disclosure. Counsel for the parties will agree on a mutually acceptable manner
21 of labeling or marking the inadvertently produced Materials as "CONFIDENTIAL"
22 or "SUBJECT TO PROTECTIVE ORDER."

23 15. Nothing within this Order will prejudice the right of any party to
24 object to the production of any discovery material on the grounds that the material
25 is protected as privileged or as attorney work product.

26 16. Nothing in this Order will bar Counsel from rendering advice to their
27 clients with respect to this litigation and, in the course thereof, relying upon any
28

1 information designated as Confidential Information, provided that the contents of
2 the information must not be disclosed.

3 17. This Order will be without prejudice to the right of any party to oppose
4 production of any information for lack of relevance or any other ground other than
5 the mere presence of Confidential Information. The existence of this Order must not
6 be used by either party as a basis for discovery that is otherwise improper under the
7 Federal Rules of Civil Procedure.

8 18. Nothing within this Order will be construed to prevent disclosure of
9 Confidential Information if such disclosure is required by law or by order of the
10 Court.

11 19. Upon final termination of this action, including any and all appeals,
12 Counsel for each party must, upon request of the producing party, return all
13 Confidential Information to the party that produced the information, including any
14 copies, excerpts, and summaries of that information, or must destroy same at the
15 option of the receiving party, and must purge all such information from all
16 machine-readable media on which it resides. Notwithstanding the foregoing,
17 Counsel for each party may retain all pleadings, briefs, memoranda, motions, and
18 other documents filed with the Court that refer to or incorporate Confidential
19 Information, and will continue to be bound by this Order with respect to all such
20 retained information. Further, attorney work product Materials that contain
21 Confidential Information need not be destroyed, but, if they are not destroyed, the
22 person in possession of the attorney work product will continue to be bound by this
23 Order with respect to all such retained information.

24 20. The restrictions and obligations set forth within this Order will not
25 apply to any information that: (a) the parties agree should not be designated
26 Confidential Information; (b) the parties agree, or the Court rules, is already public
27 knowledge; (c) the parties agree, or the Court rules, has become public knowledge
28 other than as a result of disclosure by the receiving party, its employees, or its

1 agents in violation of this Order; or (d) has come or will come into the receiving
2 party's legitimate knowledge independently of the production by the designating
3 party. Prior knowledge must be established by pre-production documentation.

4 21. The restrictions and obligations within this Order will not be deemed
5 to prohibit discussions of any Confidential Information with anyone if that person
6 already has or obtains legitimate possession of that information.

7 22. Transmission by facsimile is acceptable for all notification purposes
8 within this Order.

9 23. This Order may be modified by agreement of the parties, subject to
10 approval by the Court.

11 24. The Court may modify the terms and conditions of this Order for good
12 cause, or in the interest of justice, or on its own order at any time in these
13 proceedings. The parties prefer that the Court provide them with notice of the
14 Court's intent to modify the Order and the content of those modifications, prior to
15 entry of such an order.

16 IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

17 DATED: April 11, 2018

18 /s/Kye D. Pawlenko
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20 Kye D. Pawlenko (SBN 221475)
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23 Attorneys for Plaintiff Bryon Dittman

24 *[signatures continue on next page]*

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DATED: April 11, 2018

/s/Sarah Kroll-Rosenbaum
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Attorneys for Defendant Medical Solutions,
LLC

IT IS SO ORDERED.

Dated: April 13, 2018



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

3 I, _____, declare and say that:

- 4 1. I am employed as _____ by _____.
- 5 2. I have read the Protective Order entered in *Dittman v. Medical Solutions,*
6 *LLC*, United States District Court, Eastern District of California Case No. 2:17-cv-
7 01851-MCE-CKD, and have received a copy of the Protective Order.
- 8 3. I promise that I will use any and all “Confidential” information, as defined in
9 the Protective Order, given to me only as a manner authorized by the Protective
10 Order, and only to assist Counsel in the litigation of this matter.
- 11 4. I promise that I will not disclose or discuss such “Confidential” information
12 with anyone other than the persons described in paragraphs 3 and 7 of the
13 Protective Order.
- 14 5. I acknowledge that, by signing this agreement, I am subjecting myself to the
15 jurisdiction of the United States District Court for the Eastern District of California
16 with respect to enforcement of the Protective Order.
- 17 6. I understand that any disclosure or use of “Confidential” information in any
18 manner contrary to the provisions of the Protective Order may subject me to
19 sanctions for contempt of court.

20 I declare under penalty of perjury that the foregoing is true and correct.

21
22 Date: _____

23
24 _____
25 Signature
26
27
28