

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
NORTHERN DISTRICT OF CALIFORNIA**

DAVID APPLESTEIN, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

MEDIVATION, INC., DAVID T. HUNG, C.
PATRICK MACHADO, LYNN SEELY, and
ROHAN PALEKAR,

Defendants.

**CASE NO.: 3:10-CV-00998-
MPH**

**STIPULATION AND
(PROPOSED) ORDER
GOVERNING
CONFIDENTIAL MATERIAL**

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

VADYM SHABANOV, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

vs.

MEDIVATION, INC., DAVID T. HUNG, C.
PATRICK MACHADO, LYNN SEELY, and
ROHAN PALEKAR,

Defendants.

**CASE NO.: 3:10-CV-010149-
MPH**

MARK SLOTKIN, On Behalf of Himself and
All Others Similarly Situated,

Plaintiff,

vs.

MEDIVATION, INC., DAVID T. HUNG, C.
PATRICK MACHADO, LYNN SEELY, and
ROHAN PALEKAR,

Defendants.

**CASE NO.: 3:10-CV-02005-
MPH**

1
2 IT IS HEREBY STIPULATED AND AGREED by and between the parties to
3 the actions (the "Actions"), and the other signatories hereto, subject to the approval of
4 the Court, that:

5
6 1. This Stipulation and Order governs the treatment of documents and
7 testimony in depositions ("Discovery Material") produced by, given by, or obtained
8 from any party or any non-party who agrees to the terms of this Stipulation and Order
9 (the "Producing Person") in the above-captioned actions (the "Actions") that is
10 designated confidential by the Producing Person in accordance with the procedures set
11 forth below. Any party or non-party who, after agreeing to the terms of this
12 Stipulation and Order, produces or is compelled to produce information in these
13 Actions is considered a Producing Person for purposes of this Stipulation and Order.
14

15
16 2. Any Producing Person may designate as confidential any Discovery
17 Material which contains or discloses, inter alia, internal policies, procedures and
18 operations, non-public information, unpublished investment or trading data,
19 investment or trading forecasts or strategies, analyses, appraisals, valuations or other
20 information of a non-public nature considered by the Producing Person to be
21 commercially or personally sensitive or proprietary, including, offering memoranda
22 and limited partnership and management agreements. All Discovery Material so
23 designated and all information derived therefrom shall be referred to in this
24
25
26
27
28

1 Stipulation and Order as “Confidential Discovery Material” and shall be handled in
2 strict accordance with the terms of this Stipulation and Order.

3
4 3. Confidential Discovery Material shall be used only for the purposes of
5 the lead plaintiff motions in the Actions, and may be disclosed only under the
6 circumstances and to the persons specifically provided for in this or subsequent court
7 orders, or with the explicit consent in writing of the Producing Person with respect to
8 specifically identified Confidential Discovery Material, and shall not be used or
9 employed for any other purpose whatsoever.

10
11 4. Copies or originals of Confidential Discovery Material which are
12 delivered to a party of the Actions or otherwise leave the possession of the Producing
13 Person shall be so designated by marking or stamping them “Confidential”. With
14 respect to multi-page documents that contain Confidential Discovery Material, each
15 page of the multi-page document should be marked “Confidential”. In the case of
16 depositions, Counsel for the Producing Party may designate that the deposition be
17 maintained as “Confidential” by making a statement on the record and/or sending a
18 letter requesting that the deposition be treated as “Confidential” within 10 days of the
19 deposition.

20
21 5. Discovery Material designated as Confidential Discovery Material or
22 information derived therefrom, may be disclosed or made available without written
23 consent from the Producing Person only to the following persons:
24
25
26
27
28

1 (a) parties to the Actions (including, for parties who are corporate
2 entities, the officers, directors, and employees of the party to whom disclosure
3 is reasonably necessary for this litigation), outside litigation counsel to the
4 parties to the Actions, and attorneys, clerical, paralegal and secretarial and other
5 staff employed by such counsel, provided that a member or authorized
6 representative of such law firm shall first execute a copy of this Stipulation and
7 Order; such execution shall constitute an agreement by all lawyers in, and
8 regular and temporary employees of, that firm to be so bound;
9

10
11 (b) the authors, senders, addressees and designated copy recipients of
12 any Confidential Discovery Materials; and
13

14 (c) the Court.
15

16 6. Without written permission from the Producing Person or a court order
17 secured after appropriate notice to all interested persons, a party may not file in the
18 public record in these Actions any Confidential Discovery Material. A party that
19 seeks to file under seal any Confidential Discovery Material must comply with Civil
20 Local Rule 79-5. Confidential Discovery Material may only be filed under seal
21 pursuant to a court order authorizing the sealing of the specific Confidential Discovery
22 Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only
23 upon a request establishing that the Confidential Discovery Material at issue is
24 privileged, protectable as a trade secret, or otherwise entitled to protection under the
25
26
27
28

1 law. If a party's request to file Confidential Discovery Material under seal pursuant to
2 Civil Local Rule 79-5(d) is denied by the court, then the party may file the
3 information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
4 instructed by the court.
5

6 7. Inadvertent production of any information, document or thing without it
7 being marked "Confidential" shall not itself be deemed a waiver of any claim of
8 confidentiality as to such matter, and the same may thereafter be corrected by
9 supplemental written notice. All copies of any such information, document or thing
10 shall thereafter promptly be marked by persons in possession of them with the correct
11 designation.
12
13

14 8. Inadvertent production of any information, document or thing which the
15 Producing Person claims is privileged or is work product shall not itself be deemed a
16 waiver of any claim of privilege or work product as to such matter or as to any other
17 matter. Upon notice from the Producing Person, all copies of such information,
18 document or thing shall promptly be returned to the Producing Person.
19
20

21 9. This Stipulation and Order has no effect upon, and its scope shall not
22 extend to, any Producing Person's use of its own Confidential Discovery Material.
23

24 10. Nothing contained in this Stipulation and Order shall be construed to be
25 an admission by any party that the documents or materials labeled as Confidential
26 Discovery Material are in fact Confidential as defined herein. Nothing contained in
27
28

1 this Stipulation and Order shall be construed to be a waiver of the Producing Person's
2 right to claim that a document not designated as Confidential Discovery Material is in
3 fact Confidential within the terms of this Stipulation and Order. Nothing in this
4 Stipulation and Order shall be construed to be a waiver of any party's right to object
5 on any grounds whatsoever to any request for discovery or to an agreement to produce
6 any documents or to supply any information. The failure of any party to challenge the
7 designation by another Producing Person of Discovery Material as Confidential
8 during the discovery period shall not be a waiver of that party's right to object to the
9 designation of such material as Confidential at trial.

10
11
12
13 11. This Stipulation and Order or the existence of such shall not be offered or
14 admitted into evidence at trial, argued to the jury, or otherwise disclosed to the jury.
15 This Stipulation and Order shall have no effect on the admissibility or discoverability
16 of any Discovery Material.

17
18 12. After the termination of these proceedings, this Stipulation and Order
19 shall continue to be binding upon the parties hereto, and upon all persons to whom
20 Confidential Discovery Material has been disclosed or communicated, and this Court
21 shall retain jurisdiction over the parties for enforcement of its provisions.

22
23
24 13. Within forty-five (45) days after the Court's Order appointing a lead
25 plaintiff in this litigation, all Confidential Discovery Material supplied by a Producing
26 Person and all copies thereof (including, without limitation, copies provided to
27
28

1 testifying or consulting experts) shall be returned to the Producing Person, or the
2 party's counsel shall certify to the Producing Person that all such materials have been
3 destroyed. As to those materials containing Confidential Discovery Material, that
4 constitute counsel's work product, were served in these Actions, filed with the Court,
5 and/or marked as trial exhibits, counsel may retain such documents if such counsel
6 otherwise comply with this Stipulation and Order with respect to such retained
7 material.
8
9

10 14. A party who determines, upon advice of counsel, that Confidential
11 Discovery Material must be disclosed in order to comply with a subpoena, discovery
12 request or court order (collectively, "Disclosure Obligation") shall give all other
13 counsel written notice by telecopy and overnight mail at least ten (10) business days
14 prior to disclosing any Confidential Discovery Material, or within an appropriately
15 shorter period if such Disclosure Obligation necessitates disclosure prior to the
16 passage of ten (10) business days. The written notice shall contain copies of any
17 subpoena or other legal document which the party believes requires the disclosure.
18 The party believing disclosure to be necessary shall have the burden of proof as to
19 these issues.
20
21
22

23 15. The parties agree to seek the approval of the Court with respect to this
24 Stipulation and Order. Notwithstanding the pendency of approval by the Court, this
25 Stipulation and Order shall become effective among such parties who have executed
26
27
28

1 this agreement immediately upon such execution. If approval by the Court is
2 ultimately denied, no party shall treat any Confidential Discovery Material produced
3 prior to that time other than as provided herein.
4

5 16. Nothing in this Stipulation and Order shall be construed as prejudicing
6 any Producing Person's right to seek an agreement or court order (a) modifying the
7 provisions of this Stipulation and Order or (b) providing additional confidentiality or
8 other protections to any Confidential Discovery Material produced in this action.
9

10 However, until such agreement or order is obtained, this Stipulation and Order shall
11 constitute the entire agreement of the parties with respect to the matters covered
12 herein.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DATED: October 26, 2010

Respectfully submitted,

2 **BERNSTEIN LIEBHARD LLP**

3 

4 Sandy A. Liebhard

5 U. Seth Ottensoser

6 Joseph R. Seidman, Jr.

7 10 E. 40th Street, Suite 22

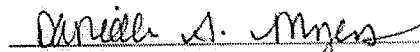
8 New York, NY 10016

9 Telephone: (212) 779-1414

10 Facsimile: (212) 779-3218

11 *Counsel for Catoosa*

12 **ROBBINS GELLER RUDMAN & DOWD LLP**

13 

14 Darren J. Robbins

15 Danielle S. Myers

16 655 W. Broadway, Ste. 1900

17 San Diego, CA 92101

18 Telephone: (619) 231-1058

19 Facsimile: (619) 231-7423

20 - and -

21 Dennis J. Herman

22 Post Montgomery Center

23 One Montgomery Street, Suite 1800

24 San Francisco, CA 94104

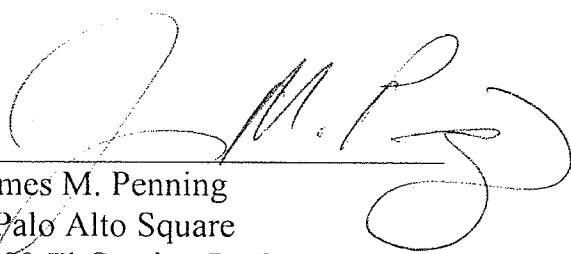
25 Telephone: (415) 288-4545

26 Facsimile: (415) 288-4534

27 *Counsel for Hopson Family Investments*

28 **COOLEY LLP**

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



James M. Penning
5 Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Telephone: (650) 843-5000
Facsimile: (650) 857-0663

Counsel for Defendants

IT IS SO ORDERED. SUBJECT TO ATTACHED MODIFICATION.

HONORABLE



November 3, 2010