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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GREGORY SCALICE,

12 Plaintiff,

13 v.

14 SALES PARTNERSHIPS
15 INCORPORATED; DOES 1 through 25,

16 Defendants.

Case No.: 20-CV-1241-AJB-WVG

**ORDER ON JOINT MOTION FOR
PROTECTIVE ORDER**

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18 On August 18, 2020, the Parties filed the pending Joint Motion for Protective Order,
19 seeking to preserve the confidentiality of certain documents and information to be
20 exchanged throughout this litigation. (Doc. No. 12.) Having reviewed and considered the
21 Parties' submission, the Court finds the Joint Motion fully complies with all applicable
22 rules, including this Court's Civil Chambers Rule V: Stipulated Protective Order
23 Provisions for Filing Documents Under Seal. Accordingly, the Court GRANTS the Joint
24 Motion in its entirety. Upon issuance of this Order, the following language, as proposed
25 and stipulated to by the Parties, shall become immediately enforceable:

26 The Court recognizes that at least some of the documents and information
27 ("materials") being sought through discovery and being exchanged informally in advance
28 of the Early Neutral Evaluation Conference in the above-captioned action are normally

1 kept confidential by the parties. The parties have agreed to be bound by the terms of this
2 Protective Order (“Order”) in this action.

3 The materials to be exchanged throughout the course of the litigation between the
4 parties may contain trade secret or other confidential research; technical, cost, price,
5 marketing or other commercial information; Plaintiff’s private medical information; the
6 parties’ private financial information; information regarding Defendant’s employees which
7 contains personal identifiers and the private information of such third parties; information
8 identifying Defendant's customers and such customers' customers and affiliates; and the
9 proprietary business information of Defendant, its customers, its customers’ customers,
10 and its customers’ affiliates such as merchants. The protection of such information is
11 grounds for a protective order as contemplated by Federal Rule of Civil Procedure
12 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as
13 much as practical during the litigation. THEREFORE:

14 DEFINITIONS

15 1. The term “confidential information” will mean and include information
16 contained or disclosed in any materials, including documents, portions of documents,
17 answers to interrogatories, responses to requests for admissions, trial testimony, deposition
18 testimony, and transcripts of trial testimony and depositions, including data, summaries,
19 and compilations derived therefrom that is deemed to be confidential information by any
20 party to which it belongs.

21 2. The term “materials” will include, but is not be limited to: documents;
22 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
23 material that identify customers or potential customers; price lists or schedules or other
24 matter identifying pricing; minutes; telegrams; letters; statements; cancelled checks;
25 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
26 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
27 compilations from which information can be obtained and translated into reasonably usable
28 form through detection devices; sketches; drawings; notes (including laboratory notebooks

1 and records); reports; instructions; disclosures; other writings; models and prototypes and
2 other physical objects.

3 3. The term “counsel” will mean outside counsel of record, and other attorneys,
4 paralegals, secretaries, and other support staff employed in the law firms of Kutak Rock,
5 LLP and Hewgill, Cobb & Lockard, APC, which respectively represent the parties.

6 GENERAL RULES

7 4. Each party to this litigation that produces or discloses any materials, answers
8 to interrogatories, responses to requests for admission, trial testimony, deposition
9 testimony, and transcripts of trial testimony and depositions, or information that the
10 producing party believes should be subject to this Protective Order, may designate the same
11 as “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

12 a. Designation as “CONFIDENTIAL”: Any party may designate information as
13 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the
14 unrestricted disclosure of such information could be potentially prejudicial to the business
15 or operations of such party.

16 b. Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”: Any party
17 may designate information as “CONFIDENTIAL - FOR COUNSEL ONLY” only if, in
18 the good faith belief of such party and its counsel, the information is among that considered
19 to be most sensitive by the party, including but not limited to trade secret or other
20 confidential research, development, financial or other commercial information, or
21 personal, private information including but not limited to medical records.

22 5. In the event the producing party elects to produce materials for inspection, no
23 marking need be made by the producing party in advance of the initial inspection. For
24 purposes of the initial inspection, all materials produced will be considered as
25 “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated as such pursuant to
26 the terms of this Order. Thereafter, upon selection of specified materials for copying by the
27 inspecting party, the producing party must, within a reasonable time prior to producing
28 those materials to the inspecting party, mark the copies of those materials that contain

1 confidential information with the appropriate confidentiality marking.

2 6. Whenever a deposition taken on behalf of any party involves a disclosure of
3 confidential information of any party:

4 a. the deposition or portions of the deposition must be designated as containing
5 confidential information subject to the provisions of this Order; such designation must be
6 made on the record whenever possible, but a party may designate portions of depositions
7 as containing confidential information after transcription of the proceedings; [A] party will
8 have until fourteen (14) days after receipt of the deposition transcript to inform the other
9 party or parties to the action of the portions of the transcript to be designated
10 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

11 b. the disclosing party will have the right to exclude from attendance at the
12 deposition, during such time as the confidential information is to be disclosed, any person
13 other than the deponent, counsel (including their staff and associates), the court reporter,
14 and the person(s) agreed upon pursuant to paragraph 8 below; and

15 c. the originals of the deposition transcripts and all copies of the deposition must
16 bear the legend “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY,” as
17 appropriate, and the original or any copy ultimately presented to a court for filing must not
18 be filed unless it can be accomplished under seal, identified as being subject to this Order,
19 and protected from being opened except by order of this Court.

20 7. All confidential information designated as “CONFIDENTIAL” or
21 “CONFIDENTIAL FOR COUNSEL ONLY” must not be disclosed by the receiving party
22 to anyone other than those persons designated within this order and must be handled in the
23 manner set forth below and, in any event, must not be used for any purpose other than in
24 connection with this litigation, unless and until such designation is removed either by
25 agreement of the parties, or by order of the Court.

26 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must
27 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by
28 independent experts, provided that the receiving party provides the expert with a copy of

1 this Order and secures the expert's written approval to be bound by the terms hereof.

2 9. Information designated "confidential" must be viewed only by counsel (as
3 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the
4 terms of paragraph 8), by court personnel, and by the additional individuals listed below,
5 provided each such individual has read this Order in advance of disclosure and has agreed
6 in writing to be bound by its terms:

7 a) Plaintiff and officers of Defendant who are required to participate in
8 decisionmaking with reference to this action;

9 b) Technical personnel of the parties with whom Counsel for the parties find it
10 necessary to consult, in the discretion of such counsel, in preparation for trial of this action;
11 and

12 c) Stenographic and clerical employees associated with the individuals identified
13 above.

14 10. With respect to material designated "CONFIDENTIAL" or
15 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of the
16 document to be its originator, author or a recipient of a copy of the document, may be
17 shown the same.

18 11. All information which has been designated as "CONFIDENTIAL" or
19 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party, and
20 any and all reproductions of that information, must be retained in the custody of the counsel
21 for the receiving party identified in paragraph 3, except that independent experts authorized
22 to view such information under the terms of this Order may retain custody of copies such
23 as are necessary for their participation in this litigation.

24 12. Before any materials produced in discovery, answers to interrogatories,
25 responses to requests for admissions, deposition transcripts, or other documents which are
26 designated as confidential information are filed with the Court for any purpose, the party
27 seeking to file such material must seek permission of the Court to file the material under
28 seal.

1 13. No document shall be filed under seal unless counsel secures a court order
2 allowing the filing of a document under seal. An application to file a document under seal
3 shall be served on opposing counsel, and on the person or entity that has custody and
4 control of the document, if different from opposing counsel. If opposing counsel, or the
5 person or entity who has custody and control of the document, wishes to oppose the
6 application, he/she must contact the chambers of the judge who will rule on the application,
7 to notify the judge's staff that an opposition to the application will be filed.

8 14. At any stage of these proceedings, any party may object to a designation of
9 the materials as confidential information. The party objecting to confidentiality must
10 notify, in writing, counsel for the designating party of the objected-to materials and the
11 grounds for the objection. If the dispute is not resolved consensually between the parties
12 within seven (7) days of receipt of such a notice of objections, the objecting party may
13 move the Court for a ruling on the objection. The materials at issue must be treated as
14 confidential information, as designated by the designating party, until the Court has ruled
15 on the objection or the matter has been otherwise resolved.

16 15. All confidential information must be held in confidence by those inspecting
17 or receiving it, and must be used only for purposes of this action. Counsel for each party,
18 and each person receiving confidential information must take reasonable precautions to
19 prevent the unauthorized or inadvertent disclosure of such information. If confidential
20 information is disclosed to any person other than a person authorized by this Order, the
21 party responsible for the unauthorized disclosure must immediately bring all pertinent facts
22 relating to the unauthorized disclosure to the attention of the other parties and, without
23 prejudice to any rights and remedies of the other parties, make every effort to prevent
24 further disclosure by the party and by the person(s) receiving the unauthorized disclosure.

25 16. No party will be responsible to another party for disclosure of confidential
26 information under this Order if the information in question is not labeled or otherwise
27 identified as such in accordance with this Order.

28 17. If a party, through inadvertence, produces any confidential information

1 without labeling or marking or otherwise designating it as such in accordance with this
2 Order, the designating party may give written notice to the receiving party that the
3 document or thing produced is deemed confidential information, and that the document or
4 thing produced should be treated as such in accordance with that designation under this
5 Order. The receiving party must treat the materials as confidential, once the designating
6 party so notifies the receiving party. If the receiving party has disclosed the materials before
7 receiving the designation, the receiving party must notify the designating party in writing
8 of each such disclosure. Counsel for the parties will agree on a mutually acceptable manner
9 of labeling or marking the inadvertently produced materials as “CONFIDENTIAL” or
10 “CONFIDENTIAL - FOR COUNSEL ONLY.”

11 18. Nothing within this order will prejudice the right of any party to object to the
12 production of any discovery material on the grounds that the material is protected as
13 privileged or as attorney work product.

14 19. Nothing in this Order will bar counsel from rendering advice to their clients
15 with respect to this litigation and, in the course thereof, relying upon any information
16 designated as confidential information, provided that the contents of the information must
17 not be disclosed.

18 20. This Order will be without prejudice to the right of any party to oppose
19 production of any information for lack of relevance or any other ground other than the mere
20 presence of confidential information. The existence of this Order must not be used by either
21 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil
22 Procedure.

23 21. Nothing within this order will be construed to prevent disclosure of
24 confidential information if such disclosure is required by law or by order of the Court.

25 22. Upon final termination of this action, including any and all appeals, counsel
26 for each party must, upon request of the producing party, return all confidential information
27 to the party that produced the information, including any copies, excerpts, and summaries
28 of that information, or must destroy same at the option of the receiving party, and must

1 purge all such information from all machine-readable media on which it resides.
2 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
3 memoranda, motions, and other documents filed with the Court that refer to or incorporate
4 confidential information, and will continue to be bound by this Order with respect to all
5 such retained information. Further, attorney work product materials that contain
6 confidential information need not be destroyed, but, if they are not destroyed, the person
7 in possession of the attorney work product will continue to be bound by this Order with
8 respect to all such retained information.

9 23. The restrictions and obligations set forth within this order will not apply to
10 any information that: (a) the parties agree should not be designated confidential
11 information; (b) the parties agree, or the Court rules, is already public knowledge; (c) the
12 parties agree, or the Court rules, has become public knowledge other than as a result of
13 disclosure by the receiving party, its employees, or its agents in violation of this Order; or
14 (d) has come or will come into the receiving party's legitimate knowledge independently
15 of the production by the designating party. Prior knowledge must be established by pre-
16 production documentation.

17 24. The restrictions and obligations within this order will not be deemed to
18 prohibit discussions of any confidential information with anyone if that person already has
19 or obtains legitimate possession of that information.

20 25. Transmission by email or some other currently utilized method of
21 transmission is acceptable for all notification purposes within this Order.

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

24 The Court may modify the terms and conditions of this Order for good cause, or in
25 the interest of justice, or on its own order at any time in these proceedings. The parties
26 prefer that the Court provide them with notice of the Court's intent to modify the Order and

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1 the content of those modifications, prior to entry of such an order.

2 **IT IS SO ORDERED.**

3 Dated: August 18, 2020



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5 Hon. William V. Gallo
6 United States Magistrate Judge
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