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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 HECTOR FERNANDEZ, individually  
12 and on behalf of all others similarly  
13 situated,  
14 Plaintiff,

15 v.

16 PROGRESSIVE MANAGEMENT  
17 SYSTEMS and EMERGENCY AND  
18 ACUTE CARE MEDICAL CORP.,  
19 Defendants.

Case No.: 21-CV-841-BEN-WVG

**ORDER ON JOINT MOTION FOR  
PROTECTIVE ORDER**

19 Before the Court is the Parties' Joint Motion for Protective Order ("Joint Motion").  
20 (Doc. No. 69.) The Joint Motion seeks to preserve the confidentiality of certain documents  
21 and information to be exchanged in the course of this litigation. Having reviewed and  
22 considered the Parties' submission, the Court finds the Joint Motion complies with all  
23 applicable rules, including this Court's Civil Chambers Rule V: Stipulated Protective Order  
24 Provisions for Filing Documents under Seal. Accordingly, the Court GRANTS the Parties'  
25 Joint Motion. Upon issuance of this Order, the following language, as agreed to by the  
26 Parties and reflected in their proposed order lodged with this Court's Chambers, shall  
27 become enforceable:  
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1 The Court recognizes that at least some of the documents and information  
2 (“materials”) being sought through discovery in the above-captioned action are, for  
3 competitive reasons, normally kept confidential by the parties. The parties have agreed to  
4 be bound by the terms of this Protective Order (“Order”) in this action.

5 The materials to be exchanged throughout the course of the litigation between the  
6 parties may contain trade secret or other confidential research, technical, cost, price,  
7 marketing or other commercial information, as is contemplated by Federal Rule of Civil  
8 Procedure 26(c)(1)(G), and personally identifying information of Plaintiff and other  
9 individuals. The purpose of this Order is to protect the confidentiality of such materials as  
10 much as practical during the litigation.

11 THEREFORE:

12 DEFINITIONS

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

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



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

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

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

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

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

1 agreement of the parties, or by order of the Court.

2 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY” must  
3 be viewed only by counsel (as defined in paragraph 3) of the receiving party, and by  
4 independent experts under the conditions set forth in this Paragraph. The right of any  
5 independent expert to receive any confidential information will be subject to the advance  
6 approval of such expert by the producing party or by permission of the Court. The party  
7 seeking approval of an independent expert must provide the producing party with the name  
8 and curriculum vitae of the proposed independent expert, and an executed copy of the form  
9 attached hereto as Exhibit A, in advance of providing any confidential information of the  
10 producing party to the expert. Any objection by the producing party to an independent  
11 expert receiving confidential information must be made in writing within fourteen (14)  
12 days following receipt of the identification of the proposed expert. Confidential  
13 information may be disclosed to an independent expert if the fourteen (14) day period has  
14 passed and no objection has been made. The approval of independent experts must not be  
15 unreasonably withheld.

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

- 21 a) Executives who are required to participate in policy decisions with  
22 reference to this action;
- 23 b) Technical personnel of the parties with whom Counsel for the parties  
24 find it necessary to consult, in the discretion of such counsel, in  
25 preparation for trial of this action; and
- 26 c) Stenographic and clerical employees associated with the individuals  
27 identified above.

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1           10. With respect to material designated “CONFIDENTIAL” or  
2 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the  
3 document to be its originator, author or a recipient of a copy of the document, may be  
4 shown the same.

5           11. All information which has been designated as “CONFIDENTIAL” or  
6 “CONFIDENTIAL -FOR COUNSEL ONLY” by the producing or disclosing party, and  
7 any and all reproductions of that information, must be retained in the custody of the counsel  
8 for the receiving party identified in paragraph 3, except that independent experts authorized  
9 to view such information under the terms of this Order may retain custody of copies such  
10 as are necessary for their participation in this litigation.

11           12. No document shall be filed under seal unless counsel secures a court order  
12 allowing the filing of a document under seal. An application to file a document under seal  
13 shall be served on opposing counsel, and on the person or entity that has custody and  
14 control of the document, if different from opposing counsel. If opposing counsel, or the  
15 person or entity who has custody and control of the document, wishes to oppose the  
16 application, he/she must contact the chambers of the judge who will rule on the application,  
17 to notify the judge’s staff that an opposition to the application will be filed.

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

26           14. All confidential information must be held in confidence by those inspecting  
27 or receiving it, and must be used only for purposes of this action. Counsel for each party,  
28 and each person receiving confidential information must take reasonable precautions to

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

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

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

21 17. Nothing within this order will prejudice the right of any party to object to the  
22 production of any discovery material on the grounds that the material is protected as  
23 privileged or as attorney work product.

24 18. Nothing in this Order will bar counsel from rendering advice to their clients  
25 with respect to this litigation and, in the course thereof, relying upon any information  
26 designated as confidential information, provided that the contents of the information must  
27 not be disclosed.  
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1           19. This Order will be without prejudice to the right of any party to oppose  
2 production of any information for lack of relevance or any other ground other than the mere  
3 presence of confidential information. The existence of this Order must not be used by any  
4 party as a basis for discovery that is otherwise improper under the Federal Rules of Civil  
5 Procedure.

6           20. Nothing within this order will be construed to prevent disclosure of  
7 confidential information if such disclosure is required by law or by order of the Court.

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

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

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1           23. The restrictions and obligations within this order will not be deemed to  
2 prohibit discussions of any confidential information with anyone if that person already has  
3 or obtains legitimate possession of that information.

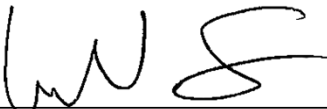
4           24. Transmission by email or some other currently utilized method of  
5 transmission is acceptable for all notification purposes within this Order.

6           25. This Order may be modified by agreement of the parties, subject to approval  
7 by the Court.

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

12           **IT IS SO ORDERED.**

13 Dated: May 17, 2023

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16 Hon. William V. Gallo  
17 United States Magistrate Judge  
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1 **EXHIBIT A**

2 I, hereby acknowledge that I, \_\_\_\_\_, [NAME]  
3 \_\_\_\_\_ [POSITION AND EMPLOYER], am  
4 about receive Confidential Materials supplied in connection with *Hector Fernandez,*  
5 *individually and on behalf of all others similarly situated v. Progressive Management*  
6 *Systems and Emergency And Acute Care Medical Corp.,* U.S.D.C. (S.D. Cal.) Case No.  
7 3:21-cv-00841-ben-WVG. I certify that I understand that the Confidential Materials are  
8 provided to me subject to the terms and restrictions of the Stipulation and Protective Order  
9 filed in this Proceeding. I have been given a copy of the Stipulation and Protective Order;  
10 I have read it, and I agree to be bound by its terms.

11 I understand that Confidential Materials, as defined in the Stipulation and Protective  
12 Order, including any notes or other records that may be made regarding any such materials,  
13 shall not be Disclosed to anyone except as expressly permitted by the Stipulation and  
14 Protective Order. I will not copy or use, except solely for the purposes of this Proceeding,  
15 any Confidential Materials obtained pursuant to this Protective Order, except as provided  
16 therein or otherwise ordered by the Court in the Proceeding.

17 I further understand that I am to retain all copies of all Confidential Materials  
18 provided to me in the Proceeding in a secure manner, and that all copies of such Materials  
19 are to remain in my personal custody until termination of my participation in this  
20 Proceeding, whereupon the copies of such Materials will be returned to counsel who  
21 provided me with such Materials.

22 I declare under penalty of perjury under the laws of the State of California that the  
23 foregoing is true and correct. Executed this \_\_\_ day of \_\_\_\_\_, 2023 at  
24 \_\_\_\_\_.

25 Signature \_\_\_\_\_  
26 Printed Name & Title \_\_\_\_\_  
27 Address, City, State, Zip \_\_\_\_\_  
28 Telephone Number \_\_\_\_\_