

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action Number: 07-cv-01772-REB

MERITAIN HEALTH, INC., a New York corporation,

Plaintiff,

v.

DAVID McFERRIN, an individual, and  
REGIONAL CARE, INC., a Nebraska corporation,

Defendants.

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**TEMPORARY RESTRAINING ORDER**

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THIS MATTER coming before the Court on Plaintiff's Motion for a Temporary Restraining Order [#4] and the parties' August 29, 2007 Stipulation [#7], the Court being fully advised in the premises,

HEREBY ORDERS that the August 29, 2007 Stipulation [#7] of the parties is approved and made an Order of this Court. Until further order of this Court:

1. Defendants David McFerrin ("McFerrin") and Regional Care, Inc. ("RCI") are prohibited from taking any action having the purpose or effect of disclosing, disseminating or in any manner utilizing the information which Plaintiff contends in this litigation is confidential, proprietary and/or trade secret information (including Plaintiff's customer or patient-specific information) obtained by Defendant McFerrin during the course of his employment with Plaintiff or obtained by Defendant RCI from Defendant

McFerrin (hereafter individually and collectively "Plaintiff's Alleged Confidential Information").

2. McFerrin is prohibited from disclosing Plaintiff's Alleged Confidential Information obtained by McFerrin during the course of his employment with Plaintiff to RCI.

3. McFerrin and RCI shall not:

a. Contact the following prospective customers of Plaintiff: Myers & Company Architectural Metals, Collins Collision, the State of Washington's Health Insurance Partnership ("HIP"), Value Plastics, Inc., Denver Center for the Performing Arts ("DCPA"), and International Catastrophic Insurance Managers ("ICAT") Great-West.

b. Contact Array Biopharma.

4. McFerrin, individually and as a representative or agent of RCI, is prohibited from contacting or soliciting, directly or indirectly: (1) any business that was a customer of Plaintiff on August 8, 2007 or during the twelve month period immediately preceding August 8, 2007; or (2) any potential customer that Defendant McFerrin contacted or solicited on behalf of Plaintiff, or that McFerrin knew was solicited on behalf of Plaintiff by other employees of Plaintiff, during the six (6) month period immediately preceding August 8, 2007.

5. McFerrin is directed to comply with the terms and conditions of the Non-Compete Agreement dated March 14, 2001 that is attached to Plaintiff's Complaint as Exhibit 1.

6. McFerrin and RCI are directed to return all hard copies of Plaintiff's Confidential Information that has been transmitted by McFerrin to RCI and all CDs, disks and/or other storage devices that any of Plaintiff's Alleged Confidential Information has been downloaded on by no later than September 7, 2007.

7. McFerrin and RCI are directed to take all necessary steps to identify the recipients of any and all electronic or hardcopy transmittals of Plaintiff's Alleged Confidential Information transmitted by McFerrin to RCI, including information relating to the customers identified in Paragraph 3(a) and (b) of this Order, and any other information Plaintiff contends is its confidential, proprietary or trade secret information that has been transmitted and/or disclosed to RCI by McFerrin, and to retrieve all copies, electronic, written or otherwise, of Plaintiff's Alleged Confidential Information transmitted to those individuals by no later than September 7, 2007.

8. McFerrin and RCI are directed to take all necessary steps to preserve without alteration any and all information relating to Plaintiff's Alleged Confidential Information, in any form or on any media, in the possession, custody or control of McFerrin or RCI (including electronic information). This order to preserve includes, but is not limited to, all information relating to the transmittal of Plaintiff's Alleged Confidential Information by McFerrin to RCI as described in the Complaint in this matter

and all information relating to dissemination or utilization of the information after it was received by RCI. The Order to preserve information includes preserving all electronic information, including meta-data; and

9. McFerrin and RCI are directed to take all necessary steps to insure that Plaintiff's Alleged Confidential Information that is in the possession of McFerrin or RCI is preserved and protected from further disclosure to employees of RCI and/or third parties.

This temporary restraining order will remain in effect until a hearing on Plaintiff's motion for preliminary injunction.

The hearing on Plaintiff's Motion for Temporary Restraining Order currently scheduled for August 31, 2007 is hereby vacated. A hearing on Plaintiff's Motion for Preliminary Injunction shall be scheduled at a telephonic setting conference to be conducted on September 11, 2007, at 10:00 a.m., with counsel for Plaintiff to arrange, schedule, and coordinate the conference call necessary to facilitate the setting conference. Prior to the Preliminary Injunction hearing, the parties are authorized to conduct the following limited discovery for purposes of preparing for the Preliminary Injunction hearing:

1. Each party will be permitted to take no more than two depositions, each deposition not to exceed three hours in length, said depositions to be scheduled no earlier than September 6, 2007.

2. Each party will be permitted to serve one set of requests for production of documents not to exceed five requests, said discovery to be served between August 30 and September 4, 2007. The party to whom the request for production is directed shall respond to the discovery within ten (10) days of service.

By stipulating to the entry of this Order, no party has made any admission concerning the merits of Plaintiff's Motion for a Temporary Restraining Order, Plaintiff's Complaint, or Plaintiff's Motion for Preliminary Injunction, nor of any allegation made therein. Each party has reserved all rights and defenses with respect to Plaintiff's Motion, Plaintiff's Complaint, and Plaintiff's Motion for Preliminary Injunction.

DONE this 30<sup>th</sup> day of August, 2007.

BY THE COURT:

s/ Robert E. Blackburn  
United States District Judge