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 8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**

10 JOHN MAKRANSKY, an individual,
 11
 Plaintiff,
 12
 vs.
 13 DAVID DOTO, an individual; and JENNA
 14 WELLS-DOTO, an individual,
 15 Defendants.

CASE NO. 2:16-cv-00563-JCM-CWH
**STIPULATED CONFIDENTIALITY
 AGREEMENT AND PROTECTIVE
 ORDER**

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 17 Defendants David Doto (“David”) and Jenna Wells-Doto (“Jenna” and together with
 18 David, “Defendants”), by and through their counsel, Eric D. Hone and Gabriel A. Blumberg of
 19 the law firm Dickinson Wright PLLC, and Plaintiff John Makransky (“Plaintiff” and together
 20 with Defendants, the “Parties), by and through his counsel, Patrick G. Byrne and V.R. Bohman
 21 of the law firm, Snell & Wilmer L.L.P., and Michael D. Fishbein of the law firm of Levin,
 22 Fishbein, Sedran & Berman, stipulate that discourse and discovery activity in the above-
 23 captioned action (the “Action”) are likely to involve the production of confidential, proprietary,
 24 or private information for which special protection from public disclosure and use for any
 25 purpose other than prosecuting this litigation would be warranted. Accordingly, the Parties
 26 stipulate to the following Stipulated Confidentiality and Protective Order (“Protective Order”).
 27 The Parties acknowledge that this Protective Order does not confer blanket protections on all
 28 disclosures or responses to discovery and that the protection it affords extends only to the limited

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1 information or items that are entitled under the applicable legal principles to treatment as
2 confidential and protected.

3 The Parties hereby STIPULATE as follows:

4 1. This Protective Order shall be applicable to and govern all depositions,
5 documents, information or things produced by a party or non-party ("Disclosing Party") in
6 connection with this litigation in response to requests for production of documents, requests for
7 inspection of things, answers to interrogatories, responses to requests for admissions, answers to
8 deposition questions and all other discovery taken pursuant to the Federal Rules Of Civil
9 Procedure, (hereafter "Discovery Material") that the Disclosing Party designates as
10 "Confidential."

11 2. Any non-party to this Action may designate any Discovery Material produced by
12 it, whether pursuant to discovery request, subpoena, or by agreement, as "Confidential" pursuant
13 to the terms of this Protective Order upon such non-party's execution of a Declaration of
14 Compliance with this Protective Order substantially in the form attached to this Protective Order
15 as Exhibit 1. A Disclosing Party designating Discovery Materials as "Confidential" shall be
16 referred to for purposes of this Protective Order as the "Designating Party." Any Party receiving
17 Discovery Material designated as "Confidential" shall be referred to for purposes of this
18 Protective Order as the "Receiving Party." Counsel for any Designating Party may designate any
19 Discovery Material as "Confidential" under the terms of this Protective Order only if such
20 counsel in good faith believes that such Discovery Material is subject to protection under Federal
21 Rule of Civil Procedure 26(c). The designation by any Designating Party of any Discovery
22 Material as "Confidential" shall constitute a representation that an attorney for the Designating
23 Party reasonably believes there is a valid basis for such designation.

24 3. For purposes of this Protective Order, "Confidential Information" shall include all
25 non-public documents or records involving: medical diagnosis, care and treatment; social
26 security numbers; driver's license or other personal identification numbers; private financial
27 records; confidential financial data; tax data or tax returns; and personal information subject to
28 protection under Nevada law. Notwithstanding the foregoing, "Confidential Information" shall

1 not mean information or documents produced or disclosed that are or become, without violating
2 this Protective Order, and apart from production or disclosure in connection with this Action, a
3 matter of public record or publicly available by law or otherwise.

4 4. Any Discovery Material designated as “Confidential” whether such information is
5 provided orally or by a document or in electronic form, shall be maintained as set forth in the
6 Protective Order, and shall not be disclosed to any person or entity, except as permitted in the
7 Protective Order.

8 5. All Discovery Material, whether or not filed or lodged with the Court, that a
9 Designating Party contends constitutes “Confidential” information shall be designated by the
10 Designating Party as follows:

- 11 a. Documents or other tangible Discovery Material shall, at the time of their
12 production, be designated by stamping or labeling the same with the legend
13 “Confidential” on each page of the Discovery Material containing such
14 information.
- 15 b. Documents or other tangible Discovery Material produced by a non-party to this
16 Action shall be so designated by the Designating Party by providing written
17 notice, as soon as reasonably practicable, to counsel of record for the Parties (and
18 to counsel of record, if any, for the non-party who produced such Documents or
19 other tangible Discovery Material) of the Bates Numbers or range or other
20 sufficiently definite description of the documents to be designated as
21 “Confidential.”
- 22 c. Deposition testimony shall be designated as “Confidential” either (i) at the taking
23 of the deposition by a statement on the record by counsel at the time of such
24 disclosure; or (ii) by written notice sent to counsel of record for all Parties within
25 ten (10) business days after receiving a copy of the final, hard copy transcript
26 thereof, identifying the specific pages designated as “Confidential.” In both of the
27 foregoing instances, counsel for the Designating Party shall direct that the legend
28 “Confidential” be affixed to the portions of the original and all copies of the

1 transcript. Counsel shall treat deposition transcripts as “Confidential” in their
2 entirety until the relevant period for the designation has expired. The Parties may
3 modify this procedure for any particular deposition through agreement on the
4 record at such deposition without further order of the Court.

5 d. Non-documentary and non-testimonial material, such as oral statements, shall be
6 designated as “Confidential” at the time of disclosure and promptly confirmed in
7 writing.

8 6. Inadvertent failure to designate Discovery Material as “Confidential” shall not
9 constitute a waiver of such claim and may be corrected by prompt supplemental written notice
10 designating such Discovery Material as “Confidential” in a manner consistent with Paragraph 5.
11 The Party receiving such supplemental written notice shall thereafter mark and treat materials so
12 designated as “Confidential” as the case may be, and such materials shall be fully subject to this
13 Protective Order as if they had been initially so designated. A person disclosing Discovery
14 Material that is subsequently designated as “Confidential” shall in good faith assist the
15 Designating Party in retrieving such Discovery Material from all recipients not entitled to receive
16 such Discovery Material under the terms of this Protective Order and prevent further disclosures
17 except as authorized under the terms of this Protective Order.

18 7. Except as the Designating Party or its counsel may otherwise agree in writing, or
19 as the Court may otherwise order, all Discovery Material marked or otherwise identified as
20 “Confidential” and received by any Receiving Party pursuant to this Protective Order: (a) shall
21 be disclosed only to such persons and in such manner as set forth in this Protective Order; (b)
22 shall be used solely for the purposes of preparation for trial, including discovery, trial of, and/or
23 appeal from, this Action; and (c) shall not be used by the Receiving Party for any other purposes.
24 The prohibitions on the use of “Confidential” information as set forth in this Protective Order
25 shall survive the termination of this Action.

26 8. Counsel for a Receiving Party may disclose or make available any Discovery
27 Material designated as “Confidential” information and/or any information derived from such
28 Discovery Material only to the following persons:

- 1 a. counsel to the Parties in this Action, including members of outside counsel firms,
2 associate attorneys, contract attorneys, paralegals, secretarial staff, clerical and
3 other regular or temporary employees, and consultants and vendors of such
4 counsel to the Parties (including trial consultants, jury consultants, and service
5 vendors such as outside copying services, outside litigation support services,
6 translation services or graphics, design, or document handling
7 services/consultants retained in connection with this Action or for purposes of
8 preparing demonstrative or other exhibits for deposition, trial, or other court
9 proceedings, but excluding consulting or testifying subject-matter experts)
10 (“Consultants and Vendors”), provided that no Discovery Material designated as
11 “Confidential” shall be disclosed to any Consultants and Vendors or temporary
12 employee of counsel to the Parties unless and until such person has executed a
13 Declaration of Compliance substantially in the form attached to this Protective
14 Order as Exhibit 1;
- 15 b. the Parties;
- 16 c. witnesses or deponents, and their counsel, during the course of, and only to the
17 extent necessary, in preparation for depositions or testimony in this Action, and
18 only after such person has executed a Declaration of Compliance substantially in
19 the form attached to this Protective Order as Exhibit 1;
- 20 d. retained experts and expert consultants assisting Counsel for the Parties in this
21 Action, and only to the extent necessary for the expert or expert consultant to
22 prepare a written opinion, to prepare to testify, or to assist counsel in the
23 prosecution or defense of this Action, subject to the provisions of Paragraph 10
24 below;
- 25 e. the Court and its staff and administrative personnel, and court reporters,
26 videographers, and stenographers employed to take depositions, and any essential
27 personnel retained by the Court; and
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1 f. any other person only upon order of the Court or upon stipulation of the
2 Designating Party.

3 9. "Confidential" Discovery Material may be provided to retained experts and/or
4 expert consultants assisting counsel for the Parties in this Action (excluding Consultants and
5 Vendors) only to the extent necessary for the expert to prepare a written opinion, testify, or assist
6 counsel in the prosecution or defense of this Action, provided that such expert: (i) is using said
7 "Confidential" Discovery Material solely in connection with this Action; and (ii) signs a
8 Declaration of Compliance in the form attached to this Protective Order as Exhibit 1, agreeing in
9 writing to be bound by the terms and conditions of this Protective Order, consenting to the
10 jurisdiction of the Court for enforcement of this Protective Order, and agreeing not to disclose or
11 use any "Confidential" Discovery Material in a manner or for purposes other than those
12 permitted by this Protective Order. Counsel for the Party using the expert shall be responsible
13 for obtaining the signed undertaking and retaining the original executed copy.

14 No "Confidential" Discovery Material may be provided to retained experts and/or expert
15 consultants unless and until such person has executed a Declaration of Compliance substantially
16 in the form attached to this Protective Order as Exhibit 1.

17 10. This Protective Order has no effect upon, and shall not apply to, the Parties' use
18 of their own Confidential Information for any purpose. Nothing in this Protective Order shall:
19 prevent a Designating Party from disclosing its own "Confidential" Discovery Material.

20 11. Unless otherwise permitted by statute, rule or prior Court order, papers filed with
21 the Court including Confidential Information shall be accompanied by a contemporaneous
22 motion for leave to file those documents under seal.

23 12. Unless a prompt challenge to a Designating Party's confidentiality designation is
24 necessary to avoid foreseeable and substantial unfairness, unnecessary economic burdens, or a
25 later significant disruption or delay of the litigation, a Receiving Party does not waive its right to
26 challenge a confidentiality designation by electing not to assert a challenge promptly after the
27 Designating Party discloses the designation.

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- 1 a. A Receiving Party that elects to initiate a challenge to a Designating Party's
2 confidentiality designation must do so in good faith and must begin the process by
3 conferring directly (in voice to voice dialogue; other forms of communication are
4 not sufficient) with counsel for the Designating Party. In conferring, the
5 challenging, Receiving Party must explain the basis for its belief that the
6 confidentiality designation was not proper and must give the Designating Party an
7 opportunity to review the designated material, and reconsider the circumstances,
8 and, if no change in designation is offered, to explain the basis for the chosen
9 designation. A challenging, Receiving Party may proceed to the next stage of the
10 challenge process only if it first has engaged in this meet and confer process.
- 11 b. A Receiving Party that elects to press a challenge to a confidentiality designation
12 after considering the justification offered by the Designating Party may file and
13 serve a motion in compliance with all applicable state and local rules that
14 identifies the challenged material and sets forth in detail the basis for the
15 challenge. Each such motion must be accompanied by a competent declaration
16 that affirms that the movant has complied with the meet and confer requirements
17 imposed in the preceding subparagraph.
- 18 c. The burden of proof in any such challenge proceeding shall be on the Designating
19 Party. Until such time as the Court rules on the challenge, all parties shall
20 continue to afford the material in question the level of protection to which it is
21 entitled under the Designating Party's designation. This provision applies only to
22 challenge proceedings, and shall not be construed to affect the burden of proof for
23 a motion to seal.
- 24 13. Entering into, agreeing to, producing, or receiving "Confidential" Discovery
25 Material pursuant to, and/or otherwise complying with the terms of, this Protective Order, or the
26 taking of any action pursuant to this Protective Order shall not:
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- 1 a. constitute or operate as an admission by any Designating or Receiving Party that
2 any particular document, material, testimony, or thing does or does not contain,
3 reflect, or constitute a trade secret or any other type of Confidential Information;
4 b. prejudice in any way the rights of any Designating or Receiving Party to object to
5 the production of documents it considers not subject to discovery, or operate as an
6 admission by any Designating or Receiving Party that the restrictions and
7 procedures set forth in this Protective Order constitute adequate protection for any
8 particular information deemed by any Designating Party to be Confidential
9 Information;
10 c. prejudice in any way the rights of any Designating or Receiving Party to object to
11 the relevancy, authenticity, or admissibility into evidence of any document,
12 material, testimony, or thing subject to this Protective Order, or otherwise
13 constitute or operate as an admission by any Designating or Receiving Party that
14 any particular document, material, testimony, or thing is or is not relevant,
15 authentic, or admissible into evidence at any deposition, at trial, or in a hearing;
16 d. prejudice in any way the rights of a Designating or Receiving Party to seek a
17 determination by the Court whether any Discovery Material should be subject to
18 the terms of this Protective Order;
19 e. prejudice in any way the rights of a Designating Party to petition the Court for a
20 further protective order relating to any purportedly Confidential Information;
21 f. prejudice in any way the rights of a Designating or Receiving Party to oppose
22 another Party's or non-party's motion to seal; and/or
23 g. prevent the Parties to this Protective Order from agreeing, in writing, to alter or
24 waive the provisions or protections of this Protective Order with respect to any
25 particular Discovery Material.

26 14. In the event additional persons or entities become Parties to this Action, none of
27 such Parties' counsel or experts shall have access to Confidential Information produced by or
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1 obtained from any Designating and Receiving Party until that newly-added Party has executed
2 and filed with the Court its agreement to be fully bound by this Protective Order.

3 15. It is the present intention of the Parties that the provisions of this Protective Order
4 shall govern discovery in this Action, but each of the Parties to this Protective Order shall be
5 entitled to seek modification of this Protective Order, or relief from it, by application to the Court
6 on notice to the other Parties. This Protective Order, however, may not be modified by the
7 Parties hereto in any attempt to use the "Confidential" Discovery Material other than for
8 purposes of this specific Action only.

9 16. The provisions of this Protective Order shall, absent written permission of the
10 Designating Party or further order of the Court, continue to be binding throughout and after the
11 conclusion of this Action, including without limitation any appeals in this Action. Within thirty
12 (30) days after receiving notice of the entry of an order, judgment, or decree finally disposing of
13 this Action, including the exhaustion of all permissible appeals, all persons and entities having
14 received "Confidential" Discovery Material, shall either make a good faith effort to return such
15 material and all copies thereof (including summaries and excerpts) to counsel for the Designating
16 Party or destroy all such "Confidential" Discovery Material and copies thereof (including
17 summaries and excerpts) and certify that fact to counsel for the Designating Party. Outside
18 counsel for the Parties shall be entitled to retain all filings, court papers, deposition and trial
19 transcripts, deposition and trial exhibits, and attorney work product (regardless of whether such
20 materials contain or reference Discovery Materials designated as "Confidential" by any
21 Designating Party), provided that such outside counsel, and employees and agents of such
22 outside counsel, shall not disclose any Confidential Information contained or referenced in such
23 materials to any person except pursuant to court order or agreement with the Designating Party.
24 All materials, if any, returned to the Parties or their counsel by the Court likewise shall be
25 disposed of in accordance with this Paragraph. This Court shall have continuing jurisdiction to
26 enforce the terms of this Protective Order, including without limitation during any appeals in this
27 Action.
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1 17. If any person receiving Discovery Material covered by this Protective Order is
2 subpoenaed, served with a demand in another action to which he or she is a party, or served with
3 any other legal process (the "Receiving Person") by one not a Party to this Action, the legal
4 process of which seeks disclosure or production of Discovery Material that was produced or
5 designated as "Confidential" by someone other than the Receiving Person, the Receiving Person
6 shall give actual written notice, by hand or facsimile transmission, within five (5) business days
7 of receipt of such subpoena, demand, or legal process, to the Designating Party. The Receiving
8 Person shall not produce any of the Designating Party's "Confidential" Discovery Material, until
9 the Designating Party gives notice to the Receiving Person that the Designating Party consents to
10 production, or opposes production of, its "Confidential" Discovery Material, and has had a
11 reasonable opportunity to object to the production. The Designating Party shall be solely
12 responsible for asserting any objection to the requested production. Nothing in this Paragraph
13 shall be construed as requiring the Receiving Person or anyone else covered by this Protective
14 Order to challenge or appeal any order requiring production of "Confidential" Discovery
15 Material covered by this Protective Order; nor shall this Paragraph be construed to subject such
16 person to any penalties for non-compliance with any legal process or order, or as precluding such
17 person from seeking any relief from this or any Court.

18 18. Any Designating or Receiving Party seeking enforcement of this Protective Order
19 against any other Designating or Receiving Party may petition the Court by properly noticed
20 motion, pursuant to this Court's rules, including a concise statement of the specific relief sought.

21 19. Nothing contained herein shall be construed or otherwise deemed to prohibit or
22 limit the introduction of confidential information into evidence on the public record at any trial
23 or hearing of the within Action. If a Designating Party wishes to limit or restrict the introduction
24 of Confidential Information into evidence on the public record, such party must timely file a
25 motion seeking such relief. Any otherwise Confidential Information that is received into
26 evidence on the public record shall not be treated as Confidential Information in any appeal from
27 any order or judgment entered by the District Court in the within Action.

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20. This Order may be executed in counterparts, each of which shall constitute one and the same agreement.

DATED this 9th day of September 2016.

SNELL & WILMER L.L.P.


/s/ V.R. Bohman
Patrick G. Byrne
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and

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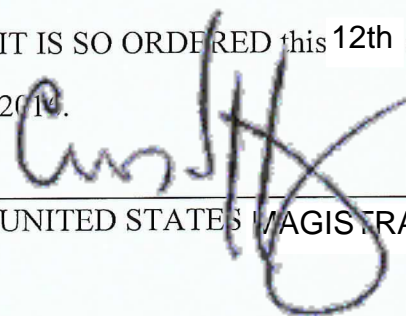
DATED this 9th day of September 2016.

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ORDER

IT IS SO ORDERED this 12th day of September, 2016.


UNITED STATES MAGISTRATE JUDGE

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EXHIBIT 1

DECLARATION OF COMPLIANCE

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated Confidentiality
and Protective Order that was issued by the United States District Court, District of Nevada, on
_____ [date] in the case of *John Makransky v. David Doto, et al*, Case No.
2:16-cv-00563-JCM-CWH. I agree to comply with and to be bound by all the terms of the
Stipulated Confidentiality and Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to the
Stipulated Confidentiality and Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court, District of
Nevada for the purpose of enforcing the terms of the Stipulated Confidentiality and Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

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