

1 Hon. Marsha J. Pechman
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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 9 MAINZ BRADY GROUP, INC., a
12 California corporation,

13 Plaintiff,

14 v.

15 12 SHANE SHOWN,

16 13 Defendant.

17 No. C17-670 MJP

18 STIPULATED PROTECTIVE ORDER

19 1. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential,
21 proprietary, or private information for which special protection may be warranted.
22 Accordingly, the parties hereby stipulate to and petition the court to enter the
23 following Stipulated Protective Order. The parties acknowledge that this
24 agreement does not confer blanket protection on all disclosures or responses to
25 discovery, the protection it affords from public disclosure and use extends only to
the limited information or items that are entitled to confidential treatment under the
applicable legal principles, and it does not presumptively entitle parties to file
confidential information under seal.

26 STIPULATED PROTECTIVE ORDER - 1

1 2. **“CONFIDENTIAL” MATERIAL**

2 “Confidential” material shall include the following documents and tangible
3 things produced or otherwise exchanged:

- 4 1. contract documents;
- 5 2. personnel and salary records;
- 6 3. information protected from disclosure by statute or other legal
7 obligations;
- 8 4. trade secrets of a party or non-party;
- 9 5. non-public financial or other sensitive business or commercial
10 information, including but not limited to business or strategic plans;
11 internal cost, budget, productivity, and revenue tracking reporting
12 information; customer information and preferences; proprietary business
13 methods or techniques; proprietary templates, forms, or other documents
14 developed by the parties; and
- 15 6. any other sensitive, confidential, proprietary, or trade secret documents or
16 information that may be the target of discovery in this action.

17 3. **SCOPE**

18 The protections conferred by this agreement cover not only confidential
19 material (as defined above), but also (1) any information copied or extracted from
20 confidential material; (2) all copies, excerpts, summaries, or compilations of
21 confidential material; and (3) any testimony, conversations, or presentations by
22 parties or their counsel that might reveal confidential material.

23 However, the protections conferred by this agreement do not cover
24 information that is in the public domain or becomes part of the public domain
25 through trial or otherwise.

26 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

STIPULATED PROTECTIVE ORDER - 2

1 4.1 Basic Principles. A receiving party may use confidential material that
2 is disclosed or produced by another party or by a non-party in connection with this
3 case only for prosecuting, defending, or attempting to settle this litigation.
4 Confidential material may be disclosed only to the categories of persons and under
5 the conditions described in this agreement. Confidential material must be stored
6 and maintained by a receiving party at a location and in a secure manner that
7 ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
9 otherwise ordered by the court or permitted in writing by the designating party, a
10 receiving party may disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as
12 employees of counsel to whom it is reasonably necessary to disclose the
13 information for this litigation;

14 (b) the officers, directors, and employees (including in house
15 counsel) of the receiving party to whom disclosure is reasonably necessary for this
16 litigation, unless the parties agree that a particular document or material produced
17 is for Attorney’s Eyes Only and is so designated;

18 (c) experts and consultants to whom disclosure is reasonably
19 necessary for this litigation and who have signed the “Acknowledgment and
20 Agreement to Be Bound” (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the
23 duplication of confidential material, provided that counsel for the party retaining
24 the copy or imaging service instructs the service not to disclose any confidential
25 material to third parties and to immediately return all originals and copies of any
26 confidential material;

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the "Acknowledgment and
3 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating
4 party or ordered by the court. Pages of transcribed deposition testimony or exhibits
5 to depositions that reveal confidential material must be separately bound by the
6 court reporter and may not be disclosed to anyone except as permitted under this
7 agreement;

8 (g) the author or recipient of a document containing the
9 information or a custodian or other person who otherwise possessed or knew the
10 information.

11 4.3 Filing Confidential Material. Before filing confidential material or
12 discussing or referencing such material in court filings, the filing party shall confer
13 with the designating party to determine whether the designating party will remove
14 the confidential designation, whether the document can be redacted, or whether a
15 motion to seal or stipulation and proposed order is warranted.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection.

18 Each party or non-party that designates information or items for protection under
19 this agreement must take care to limit any such designation to specific material that
20 qualifies under the appropriate standards. The designating party must designate for
21 protection only those parts of material, documents, items, or oral or written
22 communications that qualify, so that other portions of the material, documents,
23 items, or communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this agreement.

25 Mass, indiscriminate, or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper

1 purpose (e.g., to unnecessarily encumber or delay the case development process or
2 to impose unnecessary expenses and burdens on other parties) expose the
3 designating party to sanctions.

4 If it comes to a designating party's attention that information or items that it
5 designated for protection do not qualify for protection, the designating party must
6 promptly notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
9 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
10 protection under this agreement must be clearly so designated before or when the
11 material is disclosed or produced.

12 (a) Information in documentary form: (e.g., paper or electronic
13 documents and deposition exhibits, but excluding transcripts of depositions or
14 other pretrial or trial proceedings), the designating party must affix the word
15 "CONFIDENTIAL" to each page that contains confidential material.

16 (b) Testimony given in deposition or in other pretrial proceedings:
17 the parties and any participating non-parties must identify on the record, during the
18 deposition or other pretrial proceeding, all protected testimony, without prejudice
19 to their right to so designate other testimony after reviewing the transcript. Any
20 party or non-party may, within thirty (30) days after receiving the transcript of the
21 deposition or other pretrial proceeding, designate portions of the transcript, or
22 exhibits thereto, as confidential. If a party or non-party desires to protect
23 confidential information at trial, the issue should be addressed during the pre-trial
24 conference.

25 (c) Other tangible items: the producing party must affix in a
26 prominent place on the exterior of the container or containers in which the

1 information or item is stored the word “CONFIDENTIAL.” If only a portion or
2 portions of the information or item warrant protection, the producing party, to the
3 extent practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the designating party’s right to secure protection under this agreement for such
7 material. Upon timely correction of a designation, the receiving party must make
8 reasonable efforts to ensure that the material is treated in accordance with the
9 provisions of this agreement.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a
12 designation of confidentiality at any time. Unless a prompt challenge to a
13 designating party’s confidentiality designation is necessary to avoid foreseeable,
14 substantial unfairness, unnecessary economic burdens, or a significant disruption
15 or delay of the litigation, a party does not waive its right to challenge a
16 confidentiality designation by electing not to mount a challenge promptly after the
17 original designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any
19 dispute regarding confidential designations without court involvement. Any motion
20 regarding confidential designations or for a protective order must include a
21 certification, in the motion or in a declaration or affidavit, that the movant has
22 engaged in a good faith meet and confer conference with other affected parties in
23 an effort to resolve the dispute without court action. The certification must list the
24 date, manner, and participants to the conference. A good faith effort to confer
25 requires a face-to-face meeting or a telephone conference.

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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this action as
5 "CONFIDENTIAL," that party must:

6 (a) promptly notify the designating party in writing and include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena
9 or order to issue in the other litigation that some or all of the material covered by
10 the subpoena or order is subject to this agreement. Such notification shall include a
11 copy of this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 confidential material to any person or in any circumstance not authorized under
17 this agreement, the receiving party must immediately (a) notify in writing the
18 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
19 all unauthorized copies of the protected material, (c) inform the person or persons
20 to whom unauthorized disclosures were made of all the terms of this agreement,
21 and (d) request that such person or persons execute the "Acknowledgment and
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

23 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a producing party gives notice to receiving parties that certain
26 inadvertently produced material is subject to a claim of privilege or other

1 protection, the obligations of the receiving parties are those set forth in Federal
2 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
3 whatever procedure may be established in an e-discovery order or agreement that
4 provides for production without prior privilege review. The parties agree to the
5 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

6 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

7 Within 60 days after the termination of this action, including all appeals,
8 each receiving party must return all confidential material to the producing party,
9 including all copies, extracts and summaries thereof. Alternatively, the parties may
10 agree upon appropriate methods of destruction.

11 Notwithstanding this provision, counsel are entitled to retain one archival
12 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
13 correspondence, deposition and trial exhibits, expert reports, attorney work
14 product, and consultant and expert work product, even if such materials contain
15 confidential material.

16 The confidentiality obligations imposed by this agreement shall remain in
17 effect until a designating party agrees otherwise in writing or a court orders
18 otherwise. The parties agree that this Court shall retain jurisdiction of this action
19 after its conclusion for the purpose of enforcing the terms of this Protective Order.

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21 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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DATED: _____

Attorneys for Plaintiff

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24 DATED: _____

Attorneys for Defendant

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26 **PURSUANT TO STIPULATION, IT IS SO ORDERED**

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1 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the
2 production of any documents in this proceeding shall not, for the purposes of this
3 proceeding or any other proceeding in any other court, constitute a waiver by the
4 producing party of any privilege applicable to those documents, including the
5 attorney-client privilege, attorney work-product protection, or any other privilege
6 or protection recognized by law.

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8 DATED: September 21, 2017.

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Marsha J. Pechman
United States District Judge

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STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone 206.624.0900

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Western District of Washington on [date] in the case of *Mainz Brady Group,*
8 *Inc. v. Shane Shown*, U.S. District Court of Washington, Western District, Case
9 No. 2:17-cv-00670 RAJ. I agree to comply with and to be bound by all the terms of
10 this Stipulated Protective Order and I understand and acknowledge that failure to
11 so comply could expose me to sanctions and punishment in the nature of contempt.
12 I solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Western District of Washington for the purpose of enforcing the
17 terms of this Stipulated Protective Order, even if such enforcement proceedings
18 occur after termination of this action.

19 Date: _____

20 City and State where sworn and signed:

21 Printed name:

22 Signature:

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