

The Honorable Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

ADVANCED HAIR
RESTORATION, LLC,

Plaintiff,

v.

HAIR RESTORATION
CENTERS, LLC,

Defendant.

Case No. 2:17-cv-00709-RSM

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to 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.

1 2. “CONFIDENTIAL” MATERIAL

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

- 4 • Customer lists and/or referral sources;
- 5 • Pricing lists and formulas;
- 6 • Personal / company financial information, such as tax returns, and
7 revenue and profit statements;
- 8 • Proprietary business information and/or trade secrets, specifically
9 including information regarding Advanced Hair Restoration’s proprietary
10 FUE procedures and other surgical techniques;
- 11 • Marketing budgets and contracts, strategies, marketing data, and related
12 competitive information;
- 13 • Contracts or agreements with medical providers and other customers;
- 14 • Protected health information (“PHI”) as defined under HIPAA and
15 Washington law. Notwithstanding any other provisions in this agreement,
16 the parties agree that any PHI produced in the course of this litigation a)
17 shall not be used for any purpose other than this litigation and b) shall be
18 returned to the covered entity or destroyed at the end of this litigation, as
19 required by 45 CFR 164.512(e)(1)(ii)(B).

20 The parties retain the right to add to this list of Confidential material as may
21 required by future discovery requests in this litigation.

22 3. SCOPE

23 The protections conferred by this agreement cover not only confidential
24 material (as defined above), but also (1) any information copied or extracted from
25 confidential material; (2) all copies, excerpts, summaries, or compilations of
26 confidential material; and (3) any testimony, conversations, or presentations by
27 parties or their counsel that might reveal confidential material.
28

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

4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use confidential material that is
6 disclosed or produced by another party or by a non-party in connection with this
7 case only for prosecuting, defending, or attempting to settle this litigation.

8 Confidential material may be disclosed only to the categories of persons and under
9 the conditions described in this agreement. Confidential material must be stored
10 and maintained by a receiving party at a location and in a secure manner that
11 ensures that access is limited to the persons authorized under this agreement.

12 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the designating party, a
14 receiving party may disclose any confidential material only to:

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

18 (b) the officers, directors, and employees (including in house counsel)
19 of the receiving party to whom disclosure is reasonably necessary for this
20 litigation, unless a party marks a particular document or material as “HIGHLY
21 CONFIDENTIAL -ATTORNEYS’ EYES ONLY” which indicates a document is
22 produced for Attorney’s Eyes Only, namely the people listed in Section 4.2(a);¹

23 (c) experts and consultants to whom disclosure is reasonably necessary
24 for this litigation and who have signed the “Acknowledgment and Agreement to
25 Be Bound” (Exhibit A);
26

27 ¹ Defendant has already produced documents to Plaintiff under the designation HIGHLY CONFIDENTIAL –
28 ATTORNEYS’ EYES ONLY under the previously filed Stipulated Protective Order (Dkt. 19). The parties have
agreed to treat that production under the terms of the HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY
designation under that Protective Order.

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

2 (e) copy or imaging services retained by counsel to assist in the
3 duplication of confidential material, provided that counsel for the party retaining
4 the copy or imaging service instructs the service not to disclose any confidential
5 material to third parties and to immediately return all originals and copies of any
6 confidential material;

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

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

16 4.3 Filing Confidential Material. Before filing confidential material or
17 discussing or referencing such material in court filings, the filing party shall confer
18 with the designating party to determine whether the designating party will remove
19 the confidential designation, whether the document can be redacted, or whether a
20 motion to seal or stipulation and proposed order is warranted. Local Civil Rule
21 5(g) sets forth the procedures that must be followed and the standards that will be
22 applied when a party seeks permission from the court to file material under seal.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.
25 Each party or non-party that designates information or items for protection under
26 this agreement must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. The designating party must designate for
28 protection only those parts of material, documents, items, or oral or written

1 communications that qualify, so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations
5 that are shown to be clearly unjustified or that have been made for an improper
6 purpose (e.g., to unnecessarily encumber or delay the case development process or
7 to impose unnecessary expenses and burdens on other parties) expose the
8 designating party to sanctions.

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

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as
14 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
15 protection under this agreement must be clearly so designated before or when the
16 material is disclosed or produced.

17 (a) Information in documentary form: (e.g., paper or electronic
18 documents and deposition exhibits, but excluding transcripts of depositions or
19 other pretrial or trial proceedings), the designating party must affix the word
20 "CONFIDENTIAL" to each page that contains confidential material. If only a
21 portion or portions of the material on a page qualifies for protection, the producing
22 party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 (b) Testimony given in deposition or in other pretrial proceedings: the
25 parties and any participating non-parties must identify on the record, during the
26 deposition or other pretrial proceeding, all protected testimony, without prejudice
27 to their right to so designate other testimony after reviewing the transcript. Any
28 party or non-party may, within fifteen days after receiving the transcript of the

1 deposition or other pretrial proceeding, designate portions of the transcript, or
2 exhibits thereto, as confidential. If a party or non-party desires to protect
3 confidential information at trial, the issue should be addressed during the pre-trial
4 conference.

5 (c) Other tangible items: the producing party must affix in a prominent
6 place on the exterior of the container or containers in which the information or
7 item is stored the word "CONFIDENTIAL." If only a portion or portions of the
8 information or item warrant protection, the producing party, to the extent
9 practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the designating party's right to secure protection under this agreement for such
13 material. Upon timely correction of a designation, the receiving party must make
14 reasonable efforts to ensure that the material is treated in accordance with the
15 provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 designating party's confidentiality designation is necessary to avoid foreseeable,
20 substantial unfairness, unnecessary economic burdens, or a significant disruption
21 or delay of the litigation, a party does not waive its right to challenge a
22 confidentiality designation by electing not to mount a challenge promptly after the
23 original designation is disclosed.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any
25 dispute regarding confidential designations without court involvement. Any motion
26 regarding confidential designations or for a protective order must include a
27 certification, in the motion or in a declaration or affidavit, that the movant has
28 engaged in a good faith meet and confer conference with other affected parties in

1 an effort to resolve the dispute without court action. The certification must list the
2 date, manner, and participants to the conference. A good faith effort to confer
3 requires a face-to-face meeting or a telephone conference.

4 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
5 court intervention, the designating party may file and serve a motion to retain
6 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule
7 5(g), if applicable). The burden of persuasion in any such motion shall be on the
8 designating party. Frivolous challenges, and those made for an improper purpose
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
10 expose the challenging party to sanctions. All parties shall continue to maintain the
11 material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED 13 IN OTHER LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation
15 that compels disclosure of any information or items designated in this action as
16 “CONFIDENTIAL,” that party must:

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

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

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

25 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

26 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
27 confidential material to any person or in any circumstance not authorized under
28 this agreement, the receiving party must immediately (a) notify in writing the

1 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
2 all unauthorized copies of the protected material, (c) inform the person or persons
3 to whom unauthorized disclosures were made of all the terms of this agreement,
4 and (d) request that such person or persons execute the “Acknowledgment and
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

8 When a producing party gives notice to receiving parties that certain
9 inadvertently produced material is subject to a claim of privilege or other
10 protection, the obligations of the receiving parties are those set forth in Federal
11 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
12 whatever procedure may be established in an e-discovery order or agreement that
13 provides for production without prior privilege review. The parties agree to the
14 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

15 10. NON TERMINATION AND RETURN OF DOCUMENTS

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

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

25 The confidentiality obligations imposed by this agreement shall remain in
26 effect until a designating party agrees otherwise in writing or a court orders
27 otherwise.

28 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

1 Dated this 28th day of December, 2017.

2
3 Stokes Lawrence, P.S.

Newman Du Wors Durrance LLP

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15 Attorneys for Plaintiff

Attorneys for Defendant

16 Advanced Hair Restoration, LLC

Hair Restoration Centers, LLC

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

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

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9 Dated this 22 day of January 2018.

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12 RICARDO S. MARTINEZ
13 CHIEF UNITED STATES DISTRICT JUDGE
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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of
5 perjury that I have read in its entirety and understand the Stipulated Protective
6 Order that was issued by the United States District Court for the Western District
7 of Washington on _____ [date] in the case of *Advanced Hair Restoration, LLC v.*
8 *Hair Restoration Centers, LLC*, Case No. 2:17-cv-00709-RSM. I agree to comply
9 with and to be bound by all the terms of this Stipulated Protective Order and I
10 understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

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

19
20 Date: _____

21
22 City and State where sworn and signed: _____

23
24 Printed name: _____

25
26 Signature: _____