

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION

Plaintiff,

v.

**HACKENSACK MERIDIAN HEALTH,
INC.,**

and

**ENGLEWOOD HEALTHCARE
FOUNDATION,**

Defendants.

No. 2:20-cv-18140

STIPULATED PROTECTIVE ORDER

Plaintiff Federal Trade Commission (the “Commission”) and Defendants Hackensack Meridian Health, Inc. and Englewood Healthcare Foundation (collectively, “Defendants”), by and through their respective counsel, have stipulated, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, to the terms of this Protective Order. Discovery in this action may yield documents and information of a sensitive and confidential nature, including business, commercial, financial, and trade secret information of Defendants or third parties. The Court finds that good cause exists for entry of a protective order in this Litigation to prevent unauthorized disclosure and use of such sensitive and confidential information during and after the course of the Litigation.

IT IS THEREFORE ORDERED THAT for the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of Confidential Information submitted or produced in connection with this matter, this Protective

Order (“Protective Order”) shall govern the handling of all Confidential Information as hereafter defined.

1. As used in this Order, “Confidential Information” shall refer to any document or other information that contains competitively sensitive information, or sensitive personal information. “Sensitive personal information” shall refer to, but shall not be limited to, an individual’s Social Security number, taxpayer identification number, financial information, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.

2. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as Confidential, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.

3. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order to inform each third party of his, her, or its rights herein. Nothing in this Order shall be construed as limiting any rights of a third party from seeking other or further relief from this Court regarding the disclosure of Protected Information.

4. A designation of Confidential shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain, that counsel believes the material so designated constitutes Confidential Information, as defined in Paragraph 1 of this Order.

5. Material may be designated as Confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility

thereof), or, if an entire folder or box of documents is confidential, by placing or affixing to that folder or box, the designation “CONFIDENTIAL - FTC v. HACKENSACK AND ENGLEWOOD, CASE NO. _____,” “CONFIDENTIAL – SUBJECT TO CONFIDENTIALITY ORDER,” or any other appropriate notice, together with an indication of the portion or portions of the document considered to be Confidential Information. Confidential Information contained in electronic data or documents may also be designated as confidential by placing the designation “CONFIDENTIAL – FTC V. HACKENSACK AND ENGLEWOOD, CASE NO. _____,” “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” or any other appropriate notice, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions masked or redacted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been masked or redacted and the reasons therefor.

6. Any documents produced prior to the Court's entry of this Order, including all documents produced during Plaintiff's investigation (the “Investigation”) that preceded this litigation, shall be considered Confidential Information for a period of twenty-one calendar days from the date of entry of this Order. If a producing party wishes to maintain the designation of a document as Confidential, it shall notify the parties in this matter within twenty-one calendar days of entry of this Order. In light of the declared public health emergency resulting from the COVID-19 outbreak, producing parties may request reasonable extensions to this twenty-one day period in order to review prior productions. After twenty-one calendar days of entry of this Order and any extension, any document produced prior to the Court's entry of this Order—including any document produced during the Investigations—that is not designated

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER shall be treated as publicly disclosed.

7. Deposition testimony shall be treated as Confidential Information protected by this Order until ten business days after delivery of the transcript by the court reporter to any party or the witness. Within ten business days after delivery of the transcript, a party may serve a Notice of Designation to all parties of record identifying the specific portions of the transcript that are designated Confidential Information, and thereafter only those portions identified in the Notice of Designation shall be protected under the terms of this Order. The failure to serve a timely Notice of Designation waives any designation of deposition testimony as Confidential Information that was made on the record of the deposition, unless otherwise ordered by the Court.

8. Confidential Information shall not be used or disclosed by the parties, counsel for the parties, or by any other persons identified in Paragraph 9 for any purpose whatsoever other than in this Litigation.

9. Confidential Information shall be disclosed only to: (a) the Court presiding over this proceeding, personnel assisting the Court, Plaintiff, Plaintiff's employees, and personnel retained by Plaintiff as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction of any appellate proceeding involving this matter; (c) outside counsel of record for any Defendant, their associated attorneys, and other employees of their law firm(s), provided they are not employees of a Defendant; (d) anyone retained to assist outside counsel in the preparation for hearing of this proceeding including court reporters and recorders engaged in depositions, contractors hired for the limited purpose of making copies of documents or organizing or processing documents, including outside vendors hired to process

electronically stored documents, testifying or non-testifying experts, employees of the firm with which the expert or consultant is associated or independent contractors who are necessary to assist the expert's work, provided they are not affiliated in any way with a Defendant and have signed an agreement to abide by the terms of the confidentiality order; (e) any witness or deponent who may have authored or received the information in question; and (f) other persons only by written consent of a producing party or upon order of the Court and on such conditions as may be agreed or ordered.

10. Disclosure of Confidential Information to any person described in Paragraph 9 of this Order shall be only for the purposes of this proceeding and the related FTC administrative proceeding, and any appeals of either proceeding, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose Confidential Information as provided by its Rules of Practice, sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

11. Notwithstanding any other provision in this Order, this Order shall not prevent or restrict outside counsel for any Defendant from providing advice to their clients, and in the course of providing such advice, relying generally on counsel's examination of documents designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER." Such advice, however, cannot include the disclosure of specific information that has been designated as Confidential Information, except that the identity of declarants, deponents, and individuals on witness lists may be disclosed five (5) days after the entry of this Order to employees at each Defendant. The disclosure of the identity of a declarant, deponent, or individuals on a witness list to a client can be made solely for the purposes of rendering legal advice in this matter and

may not be disclosed—by counsel or by a Defendant—to any other person or entity. This provision shall not be construed as permitting the disclosure of any confidential material other than a witness’s name and organizational affiliation.

12. Counsel for the parties shall make reasonable efforts to prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel shall maintain copies of the forms signed by persons acknowledging their obligations under this Order for a period of three years after the termination of the case. If any party becomes aware of the unauthorized disclosure of Confidential Information, the party must notify the designating party in writing as soon as practicable.

13. An inadvertent failure to designate a document as Confidential Information does not, standing alone, waive the right to so designate the document. If a party timely designates a document as Confidential Information after the document was initially produced, the receiving party, on notification of the designation, must make a reasonable effort to assure that the document is treated in accordance with the provisions of this Order. No party shall be found to have violated this Order for failing to maintain the confidentiality of material during a time when that material has not been designated Confidential Information.

14. This Order does not authorize the filing of any document under seal. To the extent that a document filed or to be filed under seal or identified on any parties’ final pre-hearing exhibit list was originally submitted by a third party, the party including the materials in its papers or final exhibit list shall immediately notify the submitter of such inclusion within one business day of such filing.

15. The designation of any material or document or specific redaction within a document as Confidential Information is subject to challenge by any party at any time. The following procedure shall apply to any such challenge:

- a. Meet and Confer. A party challenging the designation of Confidential Information must do so in good faith and must begin the process by conferring with counsel for the designating party. In conferring, the challenging party must identify the material that the challenging party believes was not properly designated and must give the designating party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. The designating party must respond to the challenge within three (3) business days and, if it makes no change in designation, must identify and explain specifically and in writing how the designated material satisfies the definition of Confidential Information as set forth in Paragraphs 1 of this Order.
- b. Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the disputing parties shall jointly submit a letter to the Court requesting the scheduling of a telephonic conference addressing those disputes that require judicial attention. All parties must cooperate in bringing protective order disputes before the Court, even if a party is a non-challenging party. The challenging party, however, bears the responsibility of preparing and filing the joint letter with the Court. The burden of persuasion in any such challenge proceeding shall be on the

designating party. Until the Court rules on the challenge, all parties shall continue to treat the material as Confidential Information under the terms of this Order.

16. Nothing in this Order limits a party's use or disclosure of its own documents, information, or transcripts of testimony designated as Confidential Information. Nor does this Order prevent disclosure of Confidential Information by any party with the consent of the party that designated the Confidential Information.

17. In the event that any Confidential Information is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Court, the Court shall be so informed by the Party filing such papers, and such papers shall be filed in camera. To the extent that such material was originally submitted by a third party, the Party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential Information contained in the papers shall continue to have in camera treatment until further order of the Court, provided, however, that such papers may be furnished to persons or entities who may receive Confidential Information pursuant to Paragraph 9. Upon or within two (2) business days after filing any paper containing Confidential Information, the filing party shall file on the public record a duplicate copy of the paper that does not reveal Confidential Information. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy that also contains the formerly protected material.

18. In the event that any declarations produced or expert reports served that are not filed on the docket in the case contain Confidential Information, upon request from the receiving party, the party producing the declaration must provide a duplicate copy redacting such Confidential Information within two (2) days and the party serving the expert report must

provide a duplicate copy redacting such Confidential Information within five (5) days.

Disclosures of expert reports under this paragraph shall be limited to sharing with such client for the purposes of rendering legal advice.

19. If counsel plans to introduce into evidence at the hearing any document or transcript containing Confidential Information produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted in camera treatment. If that party wishes in camera treatment for the document or transcript, the party shall file an appropriate motion with the Court within four (4) business days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where in camera treatment is granted, a duplicate copy of such document or transcript with the Confidential Information deleted therefrom may be placed on the public record.

20. If any party receives a discovery request in any investigation or any other proceeding or matter that may require the disclosure of Confidential Information submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least ten (10) business days before production, and shall include a copy of this Confidentiality Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of Confidential Information, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Court. The recipient shall not oppose the submitter's efforts to challenge the disclosure of Confidential

Information. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 C.F.R. § 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

21. Within sixty days after dismissal or entry of final judgment not subject to further appeal, all receiving parties shall return to the producing parties or take all commercially reasonable steps to destroy all Confidential Information and documents marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" under this Order, including copies as defined in Paragraph 5 of this Order. The foregoing provision shall not apply if the document has been, without restriction as to disclosure, admitted into evidence at any trial or hearing in this proceeding or otherwise filed publicly with the Court. Outside Counsel for Defendants and Counsel for Plaintiffs may retain (1) attorney work product, including an index that refers or relates to designated Confidential Information, so long as that work product does not duplicate verbatim substantial portions of Confidential Information, and (2) one complete set of all documents filed with the Court including those filed under seal. Any retained Confidential Information shall continue to be protected under this Order. An attorney may use his or her work product in subsequent litigation, provided that its use does not disclose or use Confidential Information.

22. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the producing party or further order of the Court, continue to be binding after the conclusion of this proceeding.

23. This Order shall take effect when entered and shall be binding upon all counsel of record and their law firms, the parties, and persons made subject to this Order by its terms. Any

violation of this Order by a person or entity subject to it will result in the imposition of a fine and/or sanctions on that person or entity, as deemed appropriate by the Court.

Dated: January 8, 2021

Respectfully Submitted,

/s/Jonathan Lasken

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Dated: 1/11/2021

IT IS SO ORDERED



~~John Michael Vazquez
United States District Court Judge~~

James B. Clark, U.S.M.J.