

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

PARTNERS INSIGHT, LLC and  
GULF COAST OPTOMETRY, P.A.,

Plaintiffs,

v.

Case No.: 2:22-cv-739-SPC-KCD

JENNIFER GILL, STEVEN GILL,  
EYETASTIC SERVICES, LLC and  
EYETASTIC RECRUITING, LLC,

Defendants.

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**CONFIDENTIALITY ORDER**

The parties agree that a confidentiality order is needed to facilitate the exchange of discovery. But they have been unable to reach their own terms. Accordingly, the Court enters this order to govern discovery moving forward. At any time, the parties may move to modify this order or seek relief from any of its provisions in accordance with Local Rule 3.01.

**I. Scope**

In the course of discovery, the parties may be required to produce information that constitutes, in whole or in part, protected information such as trade secrets, non-public research and development, commercial or financial information, or other information that may cause harm to the producing party or a non-party. The following categories of protected information are likely

given the subject matter of the dispute: trade secrets, names of proprietary suppliers and customers, pricing and pricing terms, sales information, revenue and profit information, product and manufacturing information, and commercial financial information.

## **II. Designation of Protected Information**

This Order governs the production and handling of any protected information in this action. Any party who produces protected may designate it as “Confidential” consistent with the terms of this Order. “Designating Party” means the party or non-party who so designates the protected information; “Receiving Party” means the party or non- party to whom such information was produced or disclosed. Whenever possible, the Designating Party must designate only those portions of a document, deposition, transcript, or other material that contain the protected information and refrain from designating entire documents.

Regardless of any designations made hereunder, the Designating Party is not otherwise restricted from use or disclosure of its protected information outside of this action. In addition, any party may move to modify or seek other relief from any of the terms of this Order if it has first tried in writing and in good faith to resolve its needs or disputes with the other Party pursuant to the terms of this Order and Local Rule 3.01(g).

Designations may be made at any time. To avoid potential waiver of protection hereunder, the Designating Party should designate information at the time of production or disclosure, including on the record during the taking of any testimony.

Deposition testimony will be deemed provisionally protected for a period of 30 days after the transcript is released to the parties by the court reporter, although the parties may agree at any time to different timelines of provisional protection of information as Confidential as part of one or more specific depositions.

To retain any designations beyond the provisional period, a Designating Party must designate specific pages and lines of deposition testimony before the provisional period has expired. Such designations must be made in writing so that all counsel and court reporters may append the designation to all copies of the transcripts.

Information may be designated hereunder in any reasonable manner or method that notifies the Receiving Party of the designation level and identifies with specificity the information to which the designation applies. If made verbally, the Designating Party must promptly confirm in writing the designation. Whenever possible, the Designating Party should stamp, affix, or embed a legend of “CONFIDENTIAL” on each designated page of the document or electronic image.

### **III. Challenges to Designation**

In the event that a Receiving Party disagrees at any time with any designation(s) made by the Designating Party, the Receiving Party must first try to resolve such challenge in good faith on an informal basis with the Designating Party pursuant to Local Rule 3.01(g). The Receiving Party must provide written notice of the challenge and the grounds therefor to the Designating Party, who must respond in writing to the challenge within seven (7) days.

At all times, the Designating Party carries the burden of establishing the propriety of the designation and protection level. Unless and until the challenge is resolved by the parties or ruled upon by the Court, the designated information will remain protected under this Order. The failure of any Receiving Party to challenge a designation does not constitute a concession that the designation is proper or an admission that the designated information is otherwise competent, relevant, or material.

### **IV. Limited Access/Use of Protected Information**

Information that is produced or exchanged by the Designating Party in the course of this action and designated under this Order (subject to challenges to such designation pursuant to Section IV hereof) may be used by the Receiving Party solely for the preparation, trial, and any appeal of this action,

as well as related settlement negotiations, and for no other purpose, without the written consent of the Designating Party.

No designated information may be disclosed to any person except in accordance with the terms of this Order. All persons in possession of designated information agree to exercise reasonable care with regard to the custody, use, or storage of such information to ensure that its confidentiality is maintained. This obligation includes, but is not limited to, the Receiving Party providing to the Designating Party prompt notice of the receipt of any subpoena that seeks production or disclosure of any designated information and consulting with the Designating Party before responding to the subpoena. Any use or disclosure of Confidential information in violation of the terms of this Order may subject the disclosing person or party to sanctions.

Information designated as “CONFIDENTIAL” may only be accessed or reviewed by the following:

1. The Court, its personnel, and court reporters;
2. Counsel of record for any party in this action and their employees who assist counsel of record in this action and are informed of the duties hereunder;
3. The parties, including their agents and employees who are assisting or have reason to know of this action;
4. Experts or consultants employed by the parties or their counsel for purposes of this action; and

5. Other witnesses or persons with the Designating Party's consent or by court order.

Neither the taking of, nor the failure to take, any action to enforce the provisions of this Order, nor the failure to object to any designation, will constitute a waiver of any party's claim or defense in this action or any other action or proceeding, including but not limited to a claim or defense that any designated information is or is not confidential, is or is not entitled to particular protection, or embodies or does not embody information protectable by law.

If information designated pursuant to this Order will or may be offered in evidence at a hearing or trial, then the offering party must give advance notice to the party or non-party that designated prior to offering the information so that any use or disclosure may be addressed in accordance with the Court's case-management or other pre-trial order, or by a motion in limine.

Nothing in this Order shall be construed as a waiver by a party of any objections that may be raised as to the admissibility at trial of any evidentiary materials.

## **V. Clawback Requests**

If, at any time, a party discovers that it produced or disclosed protected information without designation, it may promptly notify the Receiving Party

in writing and identify with particularity the information to be designated and the level of designation (the claw-back notification).

The Receiving Party may then request substitute production of the newly-designated information. Within 30 days of receiving the claw-back notification, the Receiving Party must certify to the Designating Party it has appropriately marked or, if substitute production has been requested, destroyed all unmarked copies that it received, made, and/or distributed.

## **VI. Duration**

Upon conclusion of this action, including all appeals, the Designating Party(ies) is/are responsible for ensuring that any party or person to whom the party shared or disclosed designated information in this action returns or destroys all of its copies, regardless of the medium in which it was stored.

Within 60 days after the later of dismissal of this action or expiration of all deadlines for appeal, the Receiving Party(ies) must certify in writing to each Designating Party that all designated information hereunder has been destroyed by all parties and witnesses for whom that party is responsible. No witness or party may retain designated information that it received from any other party or non-party under this Order; only counsel of record are the authorized agents who may retain one copy for their respective legal files, and who must also describe to the Designating Party the extra steps taken to seal its legal file containing paper and/or electronic copies of the designated

information so that it is not accessed, used, or disclosed inconsistently with the obligations under this Order. This provision does not apply to the Court or Court staff.

## **VII. Requests to Seal**

This Order does not authorize a party to file or maintain a document under seal. Any party that seeks to file any document, or any portion of a document, under seal, and any party that opposes its maintenance under seal, must comply with the appropriate Local Rules.

**ORDRED** in Fort Myers, Florida on November 20, 2023.



Kyle C. Dudek  
United States Magistrate Judge

Copies: All Parties of Record