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**PARTIES/ATTORNEYS**

Plaintiff	John Podlesni	H. Gavin Long, Esq. Julie Lu, Esq.  Wilshire Law Firm, PLC
Defendant	County of Santa Barbara	Rachel Van Mullem Heather Smith  Santa Barbara County Counsel
Moving Party	GRS Funding	Debora Rostamkhani, Esq. Cali Law Firm, APC

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**TENTATIVE RULING**

For all the reasons discussed below, the motion to seal is denied.

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According to the amended complaint, on June 28, 2022, plaintiff John Podlesni Jr. was walking on the southern sidewalk of Burton Mesa Blvd., near 192 Burton Mesa Blvd., on the sidewalk facing Coast Hills Credit Union which is located at 3880 Constellation Rd. in Lompoc when he walked over a large uplift in the sidewalk and fell. As a result of the fall, plaintiff suffered catastrophic physical and neurological injuries. He filed his complaint against the City of Lompoc, County of Santa Barbara, and State of California for dangerous condition of public property. City of Lompoc and State of California have both been dismissed.

Trial is set for September 30, 2024.

Procedural History of Instant Motion

Plaintiff has identified the following facilities as medical providers in this case: CogNet, MR Advanced Diagnostics, and TBI Analytics. According to County of Santa Barbara, this litigation is funded by GRS Funding, which contracted with these facilities to provide “medical-legal evaluations for a pre-determined fee.” County further believed that the pre-established agreed amount for services was not what the invoice reflected. Thus, it subpoenaed each entity’s person most

knowledgably in order to obtain proof the invoices were inaccurate and to obtain proof of actual expenses and payments.

On June 28, 2024, the court granted County's motion to compel responses from the PMK at CogNet. On July 23, 2024, the court granted County's motion to compel responses from the PMKs of MR Advanced Diagnostics and TBI Analytics. On August 16, 2024, counsel for GRS Funding filed an ex parte application for a protective order and a noticed motion for protective order, seeking to prohibit the depositions. On August 19, 2024, the court denied GRS Funding's motion.

### Instant Motion

On August 29, 2024, GRS Funding filed a motion to seal the depositions of the persons most knowledgeable, Amelia Brummel, Paul South, and Michael Rozenfeld on the basis that the "depositions contain highly sensitive, proprietary, and confidential business information that constitutes trade secrets of GRS Funding under the California Uniform Trade Secrets Act (CUTSA). The disclosure of such information would result in substantial and irreparable harm to GRS Funding's competitive position."

### Applicable Law

California has recognized a constitutional right of access grounded in the First Amendment to certain court documents. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1208, fn. 25 (*NBC Subsidiary* ).) Since *NBC Subsidiary*, the California Courts of Appeal have regularly employed a constitutional analysis in resolving disputes over public access to court documents. (E.g., *In re Marriage of Nicholas* (2010) 186 Cal.App.4th 1566, 1575, [sealing orders implicate public's right of access under the 1st Amend.]; *Savaglio v. Wal-Mart Stores, Inc.* (2007) 149 Cal.App.4th 588, 596 (*Savaglio* ) [public has 1st Amend. right to access civil litigation documents filed in court and used at trial or submitted as basis for adjudication].)

In response to *NBC Subsidiary*, the Judicial Council promulgated "the sealed records rules," rules 2.550, 2.551. (*Mercury Interactive Corp. v. Klein* (2007) 158 Cal.App.4th 60, 84.) The rules expressly implement the First Amendment principles espoused in *NBC Subsidiary* and establish a presumption that "court records ... be open" unless the law requires confidentiality. (Calif. Rules of Court, rule 2.550(c); see Advisory Com. com. to rule 2.550; *In re Marriage of Nicholas*, *supra*, 186 Cal.App.4th at p. 1575.) The rules "apply to records sealed or proposed to be sealed by court order." (Calif. Rules of Court, rule 2.550(a)(1).)

"[S]ubject to certain exceptions ... a court 'record must not be filed under seal without a court order.' (Rule 2.551(a).) Further, a 'court must not permit a record to

be filed under seal based solely on the agreement or stipulation of the parties.’ (Rule 2.551(a).)” (*Mercury, supra*, 158 Cal.App.4th at p. 84.)

“A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing.” (Rule 2.551(b)(1).) In so doing, the moving party must lodge with the court the record for which the sealing order is sought. The court holds the record “conditionally under seal” until it rules on the motion or application. (Rule 2.551(b)(4).) “If the court denies the motion or application to seal, the clerk must return the lodged record to the submitting party and must not place it in the case file unless that party notifies the clerk in writing within 10 days after the order denying the motion or application that the record is to be filed.” (Rule 2.551(b)(6).)

The court may order a record sealed only upon making express findings that: “(1) There exists an overriding interest that overcomes the right of public access to the record; [¶] (2) The overriding interest supports sealing the record; [¶] (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; [¶] (4) The proposed sealing is narrowly tailored; and [¶] (5) No less restrictive means exist to achieve the overriding interest.” (Rule 2.550(d).) In its order, the court must identify the facts supporting its issuance. (Rule 2.550(e)(1)(A); *Mercury, supra*, 158 Cal.App.4th at p. 84.) The findings themselves, however, may be set forth in fairly cursory terms. (See, e.g., *McGuan v. Endovascular Technologies, Inc.* (2010) 182 Cal.App.4th 974, 988.) If the trial court fails to make the required findings, the order is deficient and cannot support sealing. (See *Providian*, 96 Cal.App.4th at pp. 301–302.)

Here, GRS has filed what appears to be a preemptive motion to seal the deposition transcripts, which are not part of the court record. It is unclear how broadly they wish for the sealing order to apply. In its motion, it “requests that the Court order these depositions, along with any related transcripts and exhibits, be sealed and used solely for purposes of this litigation.” In reply, it argues “the deposition testimony of the PMK’s for these provider (sic) should be sealed as the information irrelevant to the issues in this case.” To the extent GRS Funding intends for this to operate as a motion to exclude the testimony from this litigation, the court denies it as premature and procedurally improper. In any event, there is insufficient briefing to ascertain the relevance of the testimony (especially as the testimony has not been presented for the court’s review).

The court also denies the motion to seal the deposition transcripts and exhibits. As noted above, the rules for sealing documents “apply to records sealed or proposed to be sealed by court order.” (Calif. Rules of Court, rule 2.550(a)(1).) A “record” means “all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court, by electronic means or otherwise.” (Calif. Rules of Court, rule

2.550(b)(1).) Here, the deposition transcripts are not documents that have been filed or lodged with the court.<sup>1</sup> They are documents in the possession of the parties only. They are not “records,” capable of being sealed.

In any event, the court observes GRS Funding has already presented its argument to the court that the information sought at the depositions was proprietary and therefore should be protected. (See Motion for a Protective Order.) The court rejected that proposition. It is in no position to reconsider it now.

The motion to seal is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)

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<sup>1</sup> Lodging the documents for purposes of this motion, as is required by the Rules of Court, does not change the calculus. The deposition transcripts are not “records.”