

CAUSE NO. 2023-51403

VIRAGE SPV 1 LLC

*Plaintiff,*

v.

F. KENNETH BAILEY, JR., P.C. and F.  
KENNETH BAILEY, JR.,

*Defendants.*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152nd JUDICIAL DISTRICT COURT

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**PROTECTIVE ORDER**

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1. The preparation and litigation of this action will require the discovery of certain information eligible for protection as confidential or trade secret under applicable federal and state law. The Parties should be able to litigate this action without jeopardizing their confidential and trade secret interests in information exchanged during discovery in this Litigation. The Court accordingly enters this Protective Order (the "Order") for the purpose of preventing the disclosure and use of Confidential Information, as defined herein, except as set forth below for use in this Litigation.

2. Any Party or non-party who is asked to produce information or give testimony in this Litigation may designate material pursuant to this Order, provided they have a good faith belief for doing so (a "Designating Party").

3. A Designating Party may designate information as "Confidential" if it believes in good faith under the standards provided by applicable state and federal law that the information contains or reflects trade secret, confidential, or proprietary information of a non-public nature. Information designated as "Confidential" shall not include information that is:

- a. in the public domain;
- b. becomes part of the public domain through no fault of the recipient, as evidenced by a written record;
- c. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or
- d. lawfully comes into the recipient's possession subsequent to the time of disclosure from another source, provided that other source has the right to make the disclosure to the receiving party.

4. A Designating Party may designate information as "Attorneys' Eyes Only" if it believes in good faith under the standards provided by applicable state and federal law that the information would qualify as "Confidential," as set forth above, and would also constitute an immediate and irreparable competitive business harm if it were disclosed to another Party to this Litigation. Information designated as "Confidential" or "Attorneys' Eyes Only" shall be referred to herein as "Confidential Information."

5. Confidential Information shall be clearly marked by stamping, marking, or otherwise identifying as "Confidential" or "Attorneys' Eyes Only." For any document produced in native form (e.g., Excel spreadsheet, PowerPoint presentation, etc.) the filename of the produced document shall contain any confidentiality designation.

6. The Designating Party must take care to limit any designation of Confidential Information to specific material that qualifies for protection under applicable federal or state law.

7. With respect to depositions, the Parties agree to treat transcripts and any exhibits marked "Confidential" or "Attorneys' Eyes Only" as Confidential Information for fifteen (15) days from the date of the receipt of the final deposition transcript. Within that timeframe, any Party may designate a portion of the deposition as "Confidential" or "Attorneys' Eyes Only" by serving a written designation of page(s) and line(s) to the other Party(ies). After fifteen (15) days from the

receipt of the final deposition transcript, any page(s), line(s), and exhibits not designated in writing by any Party shall lose their status as Confidential Information.

8. Confidential Information and copies of Confidential Information shall be used only for the purpose of this Litigation.

9. For purposes of this Litigation only, information designated as “Confidential” may be disclosed as follows:

- a. To the Parties to this Litigation, including their officers and agents, but only to the extent necessary for such officer or agent to perform his/her assigned tasks in connection with this Litigation;
- b. To any person who created, received, or had actual knowledge of the Confidential Information prior to its disclosure or production in this Litigation;
- c. To the attorneys working on this Litigation on behalf of any Party (including in-house counsel), as well as their staff;
- d. To experts, vendors, or consultants retained for the purposes of this Litigation, provided that each expert, vendor, and consulting is first provided with a copy of this Order and executes Exhibit A;
- e. To witnesses who provide written or oral testimony in this case or who are preparing to provide testimony, voluntarily or pursuant to a validly issued subpoena or notice, in any hearing, deposition, or trial, so long as counsel believes in good faith that disclosure of the Confidential Information is necessary in preparation for such testimony;
- f. To the Court and its staff;
- g. To court reporters and videographers engaged in this Litigation; and
- h. To mock jurors in any mock trial or focus group conducted by a Party for this Litigation, provided the mock jurors execute some form of confidentiality agreement prior to being presented with any Confidential Information.

10. Information designated as “Attorneys’ Eyes Only” may be disclosed to the parties identified in 8(b)–(h), above.

11. A Party may object to the designation of Confidential Information by giving written notice to the Designating Party. The written notice shall specifically identify the Confidential

Information to which the Party is objecting and state the reasons for the objection. If the objecting Party and the Designating Party cannot resolve the objection within three (3) business days after the written notice, it shall be the obligation of the Designating Party to file a motion seeking to maintain the “Confidential” or “Attorneys’ Eyes Only” designation by the end of the fifth (5th) business day and seek the earliest available hearing date on the motion. If a Designating Party timely files such a motion, the Parties shall treat the disputed information as Confidential Information until the Court rules on the motion. Failure to file such a motion shall be deemed to constitute a waiver of the Designating Party’s “Confidential” or “Attorneys’ Eyes Only” designation and, at that time, the previously designated material shall lose its “Confidential” or “Attorneys’ Eyes Only” status. At all times, the Designating Party shall bear the burden of establishing that good cause exists for the “Confidential” designation.

12. A Party seeking to file any motion or pleading containing Confidential Information or exhibits shall file a redacted version of its motion or pleading and serve an unredacted courtesy copy on opposing counsel and the Court. A Designating Party who seeks to maintain the confidential status of any Confidential Information cited or attached to such a motion or pleading shall have five (5) business days to file a motion to seal such Confidential Information, in compliance with Texas Rule of Civil Procedure 76a, and seek the earliest available hearing in compliance with Rule 76a. In the event an order is issued granting any motion to seal, the full, unredacted version shall be filed under seal with the Court pursuant to that order. The full, unredacted version of the pleading will be considered filed in the Court docket as of the date of the filing of the redacted version.


13. Nothing in this Order shall limit a Party’s ability to use documents or information designated as Confidential Information at a hearing or trial in this Litigation.

14. This Order shall not govern trial exhibits or the presentation of evidence at trial. All “Confidential” or “Attorneys’ Eyes Only” stamps or markings applied pursuant to this Order shall be removed from all exhibits a Party intends to offer into evidence at trial. At the request of a Designating Party, the Court may (but is not required to) take such measures, as it deems appropriate, to protect the Confidential Information from disclosure in open court under applicable law. Absent any such request, the Parties shall be entitled to freely use during trial any document, materials, or information previously designated as Confidential Information (subject to whatever objections may be made at the time of trial).

15. Upon termination of this Litigation, including any appeals, each Party, through its counsel, shall have sixty (60) days return or destroy all Confidential Information subject to this Order, including, without limitation, all summaries, extracts or copies of Confidential Information. Nothing in this paragraph, however, shall prevent counsel for the Parties from maintaining their litigation files and the contents thereof, including correspondence, deposition transcripts and videos, pleadings, work product, and documents produced in this Litigation.

16. Nothing in this Order shall preclude any Party or non-party from filing a motion seeking further or different protection from the Court.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2023

Signed:   
10/25/2023  
\_\_\_\_\_  
Hon. Robert Schaffer

VIRAGE SPV 1 LLC

*Plaintiff,*

v.

F. KENNETH BAILEY, JR., P.C. and F.  
KENNETH BAILEY, JR.,  
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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

152<sup>nd</sup> JUDICIAL DISTRICT COURT

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**AGREEMENT TO BE BOUND**

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I hereby acknowledge that I have read the Protective Order dated \_\_\_\_\_, 2023 in the above-captioned action and attached hereto, understand the terms thereof, and agree to be bound by its terms. I submit to the jurisdiction of 152<sup>nd</sup> Judicial District Court for Harris County, Texas for all matters relating to the Protective Order and understand that the terms of the Protective Order obligate me to use documents designated CONFIDENTIAL in accordance with the Protective Order solely for the purposes of the above-captioned action, and not to disclose any such documents or information derived directly therefrom to any other person, firm or concern.

Unofficial Copy Office of Marilyn Burgess District Clerk

I acknowledge that violation of the Protective Order may result in penalties for contempt of court.

Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Employer: \_\_\_\_\_

Business Address: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

Unofficial Copy Office of Marilyn Burgess District Clerk