

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Administrative Proceedings Rulings
Release No. 6759 / May 6, 2020

Administrative Proceeding
File Nos. 3-17545, 3-17546, 3-17547, 3-17548, 3-17549

In the Matters of

Fusion Pharm, Inc.;

Scott M. Dittman, CPA;

William J. Sears;

**Microcap Management LLC,
Bayside Realty Holdings LLC,
and Meadpoint Venture
Partners, LLC;**

Cliffe R. Bodden

Protective Order

Yesterday, the Division of Enforcement moved for entry of an order to protect confidential financial and personally identifying information in its investigative file before it produces a copy to William J. Sears. The Division has confirmed that Sears is not represented by counsel and requests that the protective order be entered as soon as possible so that it can begin the process of producing the large file to Sears in prison.

I GRANT the motion and adopt the proposed protective order as modified below because I find that the harm resulting from disclosure of confidential information would outweigh the benefits of disclosure.¹ I am entering the protective order in all of these related proceedings because the Division may

¹ See 17 C.F.R. § 201.322(b).

yet have to produce its investigative file in other proceedings.² This order limits the use and dissemination of confidential information only, and does not limit any party's use of nonconfidential information.

Protective Order

1. These "proceedings" shall refer only to Administrative Proceeding File Numbers 3-17545 through 3-17549 and shall not apply to any other cases or proceedings.
2. Certain documents to be produced in these proceedings contain confidential information.
3. "Confidential information" shall mean any one or more of the following categories of information: (a) social security or tax identification number; (b) individuals' financial account statements, including statements for any bank account, credit card account, brokerage account, mortgage, student loan, or other loan; (c) financial account number, including bank account, brokerage account, and investment account numbers; (d) tax returns; (e) the home address and phone number of any individual person; (f) credit card or debit card number; (g) passport number, driver's license number, or state-issued identification number; (h) date of birth; (i) personal medical information; (j) substance-use-disorder education and treatment information; (k) names and initials of minor children; and (l) other information that is confidential as a matter of law. Confidential information does not include the last four digits of a financial account number or phone number, the city and state of an individual's home address, the year of an individual's birth, or copies of unredacted filings by regulated entities or registrants that are available on the Securities and Exchange Commission's public website.
4. The parties, to the extent applicable, may designate any document produced in these proceedings as confidential and subject to this protective order by placing the word "CONFIDENTIAL" on the document in a manner that will not interfere with the legibility of the document. Documents shall be designated as "CONFIDENTIAL" prior to or at the time of the production of the document.
5. Subject to paragraph 6 below, confidential information shall be disclosed only to qualified persons. "Qualified person" means:

² See *Fusion Pharm, Inc.*, Admin. Proc. Rulings Release No. 6757, 2020 SEC LEXIS 1237 (ALJ May 1, 2020).

- a. Attorneys of record in these proceedings, employees of such counsel, and other attorneys retained by a party for these proceedings to whom it is necessary that the material be shown for the purposes of these proceedings;
 - b. Persons, such as independent consultants or other experts employed by a party or its attorneys of record in these proceedings for the purpose of assisting in the preparation of these proceedings and to whom it is necessary that the material be shown for the purposes of these proceedings;
 - c. Parties to these proceedings, to whom it is necessary that the material be shown for the purposes of these proceedings;
 - d. Any witness at the hearing in these proceedings;
 - e. The Commission and its employees and agents, including but not limited to employees and agents in the Commissioners' offices, the Office of the Secretary, the Office of General Counsel, and the Office of Administrative Law Judges; or
 - f. Other persons by written consent of the parties or upon order by the Commission, the administrative law judge presiding over these proceedings, or a court and on such conditions as may be agreed or ordered.
6. For documents designated as "CONFIDENTIAL," prior to disclosing such documents to any qualified person other than Commission personnel or witnesses testifying at the hearing, counsel or any pro se party desiring to make such a disclosure will obtain from such person a written acknowledgement, substantially in the form provided in Ex. A to this protective order, stating that such person has read this protective order and agrees to be bound by its terms. All such acknowledgements shall be retained by the disclosing counsel or any pro se party, and, only upon motion for good cause shown, will be made available to counsel for other parties to these proceedings.
 7. All confidential information produced shall not be used by any person for any purpose whatsoever other than to prepare for and conduct these proceedings. The parties and their counsel, if any, shall take reasonable and appropriate measures to prevent unauthorized disclosure of documents designated as "CONFIDENTIAL," including copies of documents. These measures shall include keeping materials designated as "CONFIDENTIAL" under lock and key or otherwise secure from the

general prison population in the correctional facilities in which two of the Respondents are being held.

8. If a party objects to the designation of any material produced as confidential, that party may state the objection in writing to the opposing party. Parties shall promptly confer, in good faith, to resolve any dispute concerning the designation and treatment of such material. If parties are unable to resolve the dispute, the party objecting to the designation may file an application with the administrative law judge. Until such objection is resolved, the parties shall treat the designated materials as confidential in accordance with the terms of this protective order.
9. Unless otherwise agreed or ordered, this protective order shall remain in force after these proceedings are concluded via dismissal, entry of final judgment not subject to further appeal, or other termination. Within sixty days after dismissal or entry of a the conclusion of each proceeding, all documents designated "CONFIDENTIAL" in that proceeding, including any copies of such documents, shall be returned to the producing party or destroyed in lieu of return, unless such document has been offered into evidence or filed without restriction as to disclosure, provided, however, that counsel for each Respondent (or each Respondent, if pro se) and the Division may retain all or a portion of the confidential information in a locked facility for a period of time consistent with their respective retention policies, provided such confidential information is maintained confidentially pursuant to the terms of this protective order, and shall promptly destroy such material upon the end of such retention period.
10. This protective order shall take effect when entered and shall be binding upon all parties, including the Division, Respondents and their counsel, if any, and any persons made subject to this protective order by its terms.
11. Nothing in this protective order shall prevent any party from disclosing confidential information to a court or governmental body when required to do so by statute, court order, or order of any regulatory agency, after notice to all affected parties.

James E. Grimes
Administrative Law Judge

Served by e-mail on the Division of Enforcement and Respondent Scott M. Dittman, CPA.

Exhibit A

Agreement To Be Bound by Protective Order

I have read the protective order entered in the *Fusion Pharm, Inc., et al.*, Admin. Proc. File Nos. 3-17545 to 3-17549, on May 6, 2020. In consideration of receiving the confidential information, I agree as follows:

1. I understand the terms of the protective order. I agree to be fully bound by the terms of the protective order, including restrictions on the use of any documents produced pursuant to the protective order.
2. I understand that any violation of the terms of this agreement shall result in legal consequences, including remedial measures or discipline, as deemed appropriate by the Securities and Exchange Commission, the administrative law judge, or the court.
3. I agree to maintain a copy of this agreement with any confidential information that I receive, with the understanding that the Commission, the administrative law judge, or the court has jurisdiction to enforce the agreement.
4. At the conclusion of my involvement in this matter, I agree to return all confidential information that comes into my possession to the party from whom I received such materials.

I declare that the foregoing is true and correct. I understand that if any of the statements made by me in this agreement are willfully false, I am subject to legal consequences.

Name of Individual: _____

Present occupation: _____

Name of Company
or Firm: _____

Address: _____

Telephone Number: _____

Relationship to the
Action and the
Parties: _____

Signature: _____

Date: _____