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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

XXXXXX,

Plaintiff,

v.

XXXXX.,

Defendants.

No. CV-XX-0XXXX-PXX-GMS
**STIPULATED PROTECTIVE
ORDER**

Upon the parties' Proposed Joint Stipulated Protective Order (Doc. ____) and for the purpose of discovery in this action of documents, information or other materials that may involved production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted and for good cause,

IT IS ORDERED granting the parties' Joint Stipulated Protective Order (Doc. ____) as follows:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action may involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Joint Stipulated Protective Order (the "Protective Order"). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use

1 extends only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth in
3 Section 12.3, below, that this Protective Order does not entitle them to file confidential
4 information under seal. The parties will follow the Court's and the CM/ECF Procedures
5 for filing materials under seal.

6 **2. DEFINITIONS**

7 2.1 Challenging Party: a Party or Non-Party that challenges the
8 designation of information or items under this Order.

9 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for protection
11 under Federal Rule of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record and House
13 Counsel (as well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information
15 or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL"
16 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

17 2.5 Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including, among
19 other things, testimony, transcripts, and tangible things), that are produced or generated in
20 disclosures or responses to discovery in this matter.

21 2.6 Expert: a person with specialized knowledge or experience in a matter
22 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an
23 expert witness or as a consultant in this action, (2) is not a current employee of a Party or
24 of a Party's competitor, and (3) at the time of retention, is not anticipated to become an
25 employee of a Party or of a Party's competitor.

26 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
27 Information or Items: extremely sensitive "Confidential Information or Items," disclosure
28 of which to another Party or Non-Party would create a substantial risk of serious harm that

1 could not be avoided by less restrictive means.

2 2.8 House Counsel: attorneys who are employees of a party to this action.
3 House Counsel does not include Outside Counsel of Record or any other outside counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association,
5 or other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this action but are retained to represent or advise a party to this action and have
8 appeared in this action on behalf of that party or are affiliated with a law firm which has
9 appeared on behalf of that party.

10 2.11 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.13 Professional Vendors: persons or entities that provide litigation
16 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
18 their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’
21 EYES ONLY.”

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 **3. SCOPE**

25 The protections conferred by this Stipulation and Order cover not only Protected
26 Material (as defined above), but also (1) any information copied or extracted from
27 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
28 Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel

1 that reveal Protected Material. However, the protections conferred by this Stipulation and
2 Order do not cover the following information: (a) any information that is in the public
3 domain at the time of disclosure to a Receiving Party or becomes part of the public domain
4 after its disclosure to a Receiving Party as a result of publication not involving a violation
5 of this Order, including becoming part of the public record through trial or otherwise; and
6 (b) any information known to the Receiving Party prior to the disclosure or obtained by the
7 Receiving Party after the disclosure from a source who obtained the information lawfully
8 and under no obligation of confidentiality to the Designating Party. This Order does not
9 govern the use of Protected Material at trial. Any use of Protected Material at trial shall be
10 governed by a separate agreement or the orders of the trial judge and other applicable
11 authorities.

12 **4. DURATION**

13 Even after final disposition of this litigation, the confidentiality obligations imposed
14 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
15 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
16 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
17 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,
18 trials, or reviews of this action, including the time limits for filing any motions or
19 applications for extension of time pursuant to applicable law. To the extent permitted by
20 law, the Court shall retain jurisdiction to enforce, modify, or reconsider this Order, even
21 after the proceeding is terminated.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under this
25 Order must take care to limit any such designation to specific material that qualifies under
26 the appropriate standards. To the extent it is practical to do so, the Designating Party must
27 designate for protection only those parts of material, documents, items, or oral or written
28 communications that qualify – so that other portions of the material, documents, items, or

1 communications for which protection is not warranted are not swept unjustifiably within
2 the ambit of this Order.

3 Mass, indiscriminate, or routinized designations are discouraged. Designations that
4 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
5 to unnecessarily encumber or retard the case development process or to impose
6 unnecessary expenses and burdens on other parties) may expose the Designating Party to
7 sanctions.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection at all or do not qualify for the level
10 of protection initially asserted, that Designating Party must promptly notify all other parties
11 that it is withdrawing the designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
14 or ordered, Disclosure or Discovery Material that qualifies for protection under this Order
15 must be clearly so designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
19 that the Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains protected
21 material. If only a portion or portions of the material on a page qualifies for protection, the
22 Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins) and must specify, for each portion, the level of
24 protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has
27 indicated which material it would like copied and produced. During the inspection and
28 before the designation, all of the material made available for inspection shall be deemed

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party
2 has identified the documents it wants copied and produced, the Producing Party must
3 determine which documents, or portions thereof, qualify for protection under this Order.
4 Then, before producing the specified documents, the Producing Party must affix the
5 appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material. If only a
7 portion or portions of the material on a page qualifies for protection, the Producing Party
8 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in
9 the margins) and must specify, for each portion, the level of protection being asserted.

10 (b) for computer media: Any “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information (as defined above)
12 produced on magnetic disks or other computer-related media may be designated as such
13 by labeling each disk or media “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” prior to production. If the “CONFIDENTIAL” or
15 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” designation applies only to
16 a limited set of documents and/or categories of information stored on the computer media,
17 the Producing Party shall explicitly identify those documents and/or categories in a cover
18 letter accompanying the production of the computer media. In the event a Receiving Party
19 generates any “hard copy” or printout of documents designated as “CONFIDENTIAL” or
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to the terms of
21 this provision from any such computer media, that party must immediately stamp each
22 page “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
23 ONLY” as appropriate and the hard copy or printout shall be treated as provided herein for
24 such categories.

25 (c) for testimony given in deposition or in other pretrial or trial
26 proceedings, that the Designating Party identify all protected testimony and specify the
27 level of protection being asserted. By right, the Designating Party shall have 21 days from
28 the date of the deposition, hearing or other proceeding to identify the specific portions of

1 the testimony as to which protection is sought and to specify the level of protection being
2 asserted. Only those portions of the testimony that are appropriately designated for
3 protection within the 21 days shall be covered by the provisions of this Protective Order.
4 Alternatively, a Designating Party may specify, at the deposition or up to 21 days
5 afterwards if that period is properly invoked, that the entire transcript shall be treated as
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” P

7 Parties shall give the other parties notice if they reasonably expect a deposition,
8 hearing or other proceeding to include Protected Material so that the other parties can
9 ensure that only authorized individuals who have signed the “Acknowledgment and
10 Agreement to Be Bound” (Exhibit A) are present at those proceedings. The use of a
11 document as an exhibit at a deposition shall not in any way affect its designation as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

13 After the designation period has past, transcripts containing Protected Material shall
14 have an obvious legend on the title page that the transcript contains Protected Material,
15 and the title page shall be followed by a list of all pages (including line numbers as
16 appropriate) that have been designated as Protected Material and the level of protection
17 being asserted by the Designating Party. The Designating Party shall inform the court
18 reporter of these requirements. Any transcript that is prepared before the expiration of a
19 21-day period for designation shall be treated during that period as if it had been designated
20 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
21 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
22 actually designated.

23 (d) for information produced in some form other than documentary and
24 for any other tangible items, that the Producing Party affix in a prominent place on the
25 exterior of the container or containers in which the information or item is stored the legend
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If
27 only a portion or portions of the information or item warrant protection, the Producing
28 Party, to the extent practicable, shall identify the protected portion(s) and specify the level

1 of protection being asserted.

2 5.3 Non-Party Discovery Material. A Party may designate as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
4 Disclosure or Discovery Material produced by a Non-Party by providing written notice to
5 all parties of the relevant document numbers or other identification within fifteen (15) days
6 after receiving such documents or Disclosure or Discovery Materials. During this fifteen
7 (15) day period the Disclosure or Discovery Material produced by a Non-Party shall be
8 treated by the Parties as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

9 5.4 Inadvertent Failures to Designate. An inadvertent failure by a
10 Producing Party to designate qualified information as “CONFIDENTIAL” or “HIGHLY
11 CONFIDENTIAL — ATTORNEYS’ EYES ONLY,” shall be without prejudice to any
12 claim that such item is “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -
13 ATTORNEYS’ EYES ONLY” and such Producing Party shall not be held to have waived
14 any rights by such inadvertent failure. In the event that any Disclosure or Discovery
15 Material that warrants a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
16 ATTORNEYS’ EYES ONLY” designation is inadvertently produced without such
17 designation, the Producing Party that inadvertently produced the document shall give
18 written notice of such inadvertent production within twenty (20) days of discovery of the
19 inadvertent production, together with a further copy of the subject Disclosure or Discovery
20 Material designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” (the “Inadvertent Production Notice”), to the Receiving
22 Party’s Outside Counsel of Record. Upon receipt of such Inadvertent Production Notice,
23 the Receiving Party that received the inadvertently produced Disclosure or Discovery
24 Material shall promptly replace the inadvertently produced Disclosure or Discovery
25 Material identified in the Inadvertent Production Notice with the replacement and correctly
26 designated document. This provision is not intended to apply to any inadvertent production
27 of any information protected by attorney-client or work product privileges. In the event
28 that this provision conflicts with any other applicable law regarding waiver of

1 confidentiality through the inadvertent production of Disclosure or Discovery Material,
2 such other law shall govern.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a Designating
6 Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
7 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party
8 does not waive its right to challenge a confidentiality designation by electing not to mount
9 a challenge promptly after the original designation is disclosed.

10 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
11 resolution process by providing written notice of each designation it is challenging and
12 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has
13 been made, the written notice must recite that the challenge is being made pursuant to this
14 specific paragraph 6.2 of the Protective Order. The parties shall attempt to resolve each
15 challenge in good faith and must begin the process by conferring directly (in voice to voice
16 dialogue; other forms of communication are not sufficient) within 14 days of the date of
17 service of notice. In conferring, the Challenging Party must explain the basis for its belief
18 that the confidentiality designation was not proper and must give the Designating Party an
19 opportunity to review the designated material, to reconsider the circumstances, and, if no
20 change in designation is offered, to explain the basis for the chosen designation. A
21 Challenging Party may proceed to the next stage of the challenge process only if it has
22 engaged in this meet and confer process first or establishes that the Designating Party is
23 unwilling to participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
25 without court intervention, the Challenging Party shall raise a dispute with the Court using
26 the Court's dispute resolution process within 21 days of the initial notice of challenge or,
27 if the parties agree that the meet and confer process will not resolve their dispute, within
28 14 days of such agreement, whichever is later. Failure by the Challenging Party to raise

1 such a dispute within the applicable time frame shall automatically waive the ability to
2 challenge the confidentiality designation for each challenged designation.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to
5 harass or impose unnecessary expenses and burdens on other parties) may expose the
6 Challenging Party to sanctions. Each confidentiality designation shall remain in effect, and
7 every Party must observe and abide by that designation, unless and until the Designating
8 Party withdraws the designation or the Court rules that the designated material is not
9 entitled to such designation.

10 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1 Basic Principles. For purposes of this Sections 7.1, 7.2 and 7.3 only,
12 the term “Receiving Party” includes anyone who executes the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A). A Receiving Party may use and disclose Protected
14 Material that is disclosed or produced by another Party or by a Non-Party only for
15 prosecuting, defending, administering, or attempting to settle this litigation. Neither a
16 Receiving Party nor Outside Counsel of Record of a Receiving Party may use or disclose
17 Protected Material that is disclosed or produced by another Party or by a Non-Party in this
18 case in connection with any other litigation, including, but not limited to, any other
19 litigation that involves one or more of the Parties to this litigation. Protected Material may
20 be disclosed only to the categories of persons and under the conditions described in this
21 Protective Order. When the litigation has been terminated, a Receiving Party must comply
22 with the provisions of section 13 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a location
24 and in a secure manner that ensures that access is limited to the persons authorized under
25 this Protective Order.

26 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated “CONFIDENTIAL”

1 only to:

2 (a) the Receiving Party's Outside Counsel of Record in this action, as
3 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
4 to disclose the information for this litigation;

5 (b) the officers, directors, and appropriate current or former employees
6 (including House Counsel) of the Receiving Party to whom disclosure is reasonably
7 necessary for this litigation and who have signed the "Acknowledgment and Agreement to
8 Be Bound" (Exhibit A);

9 (c) Experts (as defined in this Order) of the Receiving Party to whom
10 disclosure is reasonably necessary for this litigation and who have signed the
11 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (d) the Court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants,
14 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
15 litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
16 (Exhibit A);

17 (f) during their depositions, witnesses, and attorneys for witnesses, in this
18 action to whom disclosure is reasonably necessary provided: (1) the deposing party
19 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not
20 be permitted to keep any confidential information unless they sign the "Acknowledgment
21 and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating
22 Party or ordered by the Court. More specifically, Outside Counsel may show Protected
23 Material to a witness at a deposition and examine the witness concerning the same.
24 Examining counsel may, in the course of the deposition inquire as to whether the witness
25 agrees to be bound by the terms of this Protective Order. If the witness does not so agree,
26 then neither the witness nor his or her counsel, if any, may retain or be given any copy of
27 the Protected Material including, but not limited to a copy of any pages of the transcript of
28 the deposition that are designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY." In the event of such refusal by the witness, the reporter
2 shall be instructed to give the witness written notice when the transcript has been prepared,
3 stating that the witness may inspect the transcript and its exhibits in the reporter's office,
4 and that if the original deposition transcript is not signed within thirty (30) days after the
5 date of the notice, it will be used as if it had been signed. If the witness does not sign the
6 original deposition transcript within thirty (30) days after the date of the written notice
7 described in this paragraph, the deposition transcript may be used as if it had been signed;

8 (g) the author of a document containing the information or a custodian
9 or other person who otherwise received, possessed, or knew the information prior to its
10 production by the Producing Party; and

11 (h) any mediators or settlement officers, as well as their staff to whom it
12 is reasonably necessary to disclose the information for this action, as mutually agreed upon
13 by all the parties in this action, and who have signed the "Acknowledgment and Agreement
14 to Be Bound" (Exhibit A).

15 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
16 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in
17 writing by the Designating Party, a Receiving Party may disclose any information or item
18 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as
20 well as employees of said Outside Counsel of Record to whom it is reasonably necessary
21 to disclose the information for this litigation;

22 (b) House Counsel of a Receiving Party (1) to whom disclosure is
23 reasonably necessary for this litigation, and (2) who has signed the "Acknowledgement
24 and Agreement to Be Bound" (Exhibit A);

25 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
26 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to
27 Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a),
28 below, have been followed;

1 (d) the Court and its personnel;
2 (e) court reporters and their staff, professional jury or trial consultants,
3 and Professional Vendors to whom disclosure is reasonably necessary for this litigation
4 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
5 and

6 (f) the author of a document containing the information or a custodian or
7 other person who otherwise received, possessed, or knew the information prior to its
8 production by the Producing Party.

9 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Experts.

11 (a) Unless otherwise ordered by the court or agreed to in writing by the
12 Designating Party, a Party that seeks to disclose to an Expert any information or item that
13 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
14 pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that
15 (1) identifies the specific “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 information that Receiving Party seeks permission to disclose to the Expert, (2) sets forth
17 the full name of the Expert and the city and state of his or her primary residence, (3) attaches
18 a copy of the Expert’s current resume, (4) identifies the Expert’s current employer(s), (5)
19 identifies each person or entity from whom the Expert has received compensation or
20 funding for work in his or her areas of expertise or to whom the expert has provided
21 professional services, including in connection with a litigation, at any time during the
22 preceding five years,¹ and (6) to the extent it is practicable for the expert to do so, identifies
23 (by name and number of the case, filing date, and location of court) any litigation in
24 connection with which the Expert has provided any professional services including, but not
25 limited to, offering expert testimony, including through a declaration, report, or testimony

26 _____
27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to
28 a third-party, then the Expert should provide whatever information the Expert believes can
be disclosed without violating any confidentiality agreements, and the Party seeking to
disclose to the Expert shall be available to meet and confer with the Designating Party
regarding any such engagement.

1 at a deposition or trial during the preceding five years.

2 (b) A Party that makes a request and complies with Section 7.4(a) may
3 disclose the subject Protected Material to the identified Expert on the 11th day after the
4 request is made unless, within ten (10) days of delivering the request (unless otherwise
5 agreed to by counsel), the Party receives a written objection from the Designating Party. If
6 the Designating Party approves, the Party making the request may disclose the subject
7 Protected Material to the identified Expert earlier than the 11th day after the request is
8 made. Any such objection from the Designating Party must set forth in detail the grounds
9 on which it is based.

10 (c) A Party that receives a timely written objection must meet and confer
11 with the Designating Party (through direct voice to voice dialogue) to try to resolve the
12 matter by agreement within 5 days of the written objection (unless otherwise agreed to by
13 counsel). If no agreement is reached, the Party seeking to make the disclosure to the Expert
14 may file a motion seeking permission from the court to do so. Any such motion must
15 describe the circumstances with specificity, set forth in detail the reasons why the
16 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure
17 would entail, and suggest any additional means that could be used to reduce that risk. In
18 addition, any such motion must be accompanied by a competent declaration describing the
19 parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the
20 meet and confer discussions) and setting forth the reasons advanced by the Designating
21 Party for its refusal to approve the disclosure.

22 In any such proceeding, the Party opposing disclosure to the Expert shall bear the
23 burden of proving that the risk of harm that the disclosure would entail (under the
24 safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
25 Material to its Expert.

26 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
27 **PRODUCED IN OTHER LITIGATION**

28 8.1 Other Proceedings. By entering this order and limiting the disclosure

1 of information in this case, the Court does not intend to preclude another court from
2 finding that information may be relevant and subject to disclosure in another case. If any
3 person or Party subject to this order is served with a subpoena or a court order issued in
4 other litigation that compels disclosure of any information or items designated in this action
5 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,”
6 prior to disclosure of the designated information or items that person or Party must:

7 (a) notify the Designating Party and all other named Parties in this
8 litigation, in writing (by e-mail if possible) immediately and in no event more than 7 days
9 after receiving the subpoena or court order. Such notification shall include a copy of the
10 subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or order
12 to issue in the other litigation that some or all of the material covered by the subpoena or
13 order is subject to this Protective Order. Such notification shall include a copy of this
14 Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the person or Party
18 served with the subpoena or court order shall not produce any information designated in
19 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY” before a determination by the court from which the subpoena or order
21 issued, unless the person or Party has obtained the Designating Party’s permission. The
22 Designating Party shall bear the burden and expense of seeking protection in that court of
23 its confidential material – and nothing in this Protective Order should be construed as
24 authorizing or encouraging any person or Party in this action to disobey a lawful directive
25 from another court.

26 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
27 **PRODUCED IN THIS LITIGATION**

28 (a) The terms of this Protective Order are applicable to information

1 produced by a Non-Party in this action and designated as “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information
3 produced by a Non-Party in connection with this litigation is protected by the remedies and
4 relief provided by this Protective Order. Nothing in this Protective Order should be
5 construed as prohibiting a Non-Party from seeking additional protections.

6 (b) In the event that a Party is required, by a valid discovery request, to
7 produce a Non-Party’s confidential information in its possession, and the Party is subject
8 to an agreement with the Non-Party not to produce the Non-Party’s confidential
9 information, then the Party shall:

10 1. promptly notify in writing the Requesting Party and the
11 NonParty that some or all of the information requested is subject to a confidentiality
12 agreement with a Non-Party;

13 2. promptly provide the Non-Party with a copy of the Protective
14 Order in this litigation, the relevant discovery request(s), and a reasonably specific
15 description of the information requested; and

16 3. make the information requested available for inspection by the
17 Non-Party.

18 (c) If the Non-Party fails to object or seek a protective order from this
19 court within 14 days of receiving the notice and accompanying information, the Receiving
20 Party may produce the Non-Party’s confidential information responsive to the discovery
21 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
22 produce any information in its possession or control that is subject to the confidentiality
23 agreement with the Non-Party before a determination by the court. Absent a court order to
24 the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
25 court of its Protected Material.

26 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Protective Order, the Receiving Party must immediately (a) notify in writing the
2 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
3 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
4 unauthorized disclosures were made of all the terms of this Order, and (d) request such
5 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
6 attached hereto as Exhibit A.

7 **11. INADVERTENTLY PRODUCED PRIVILEGED DOCUMENTS**

8 The parties hereto acknowledge that regardless of the Producing Party’s diligence
9 an inadvertent production of attorney-client privileged or attorney work product materials
10 may occur. In accordance with Fed. R. Civ. P. 26(b)(5) and Fed. R. Evid. 502, they
11 therefore agree that if a party through inadvertence produces or provides discovery that it
12 believes is subject to a claim of attorney-client privilege or attorney work product, the
13 Producing Party may give written notice to the Receiving Party that the document or thing
14 is subject to a claim of attorney-client privilege or attorney work product and request that
15 the document or thing be returned to the Producing Party. The Receiving Party shall return
16 to the Producing Party such document or thing. Return of the document or thing shall not
17 constitute an admission or concession, or permit any inference, that the returned document
18 or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work
19 product, nor shall it foreclose any party from moving the Court pursuant to Fed. R. Civ. P.
20 26(b)(5) and Fed. R. Evid. 502 for an Order that such document or thing has been
21 improperly designated or should be produced. Any Receiving Party that receives a
22 document or electronically stored information that it reasonably suspects is subject to a
23 claim of attorney-client privilege or attorney work product and knows or reasonably should
24 know that the document was inadvertently produced shall promptly notify the Producing
25 Party.

26 **12. MISCELLANEOUS**

27 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
28 person to seek its modification by the court or by agreement of the Parties in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to disclosing
3 or producing any information or item on any ground not addressed in this Protective Order.
4 Similarly, no Party waives any right to object on any ground to use in evidence of any of
5 the material covered by this Protective Order.

6 12.3 Filing Protected Material. Without written permission from the
7 Designating Party or a court order secured after appropriate notice to all interested persons,
8 a Party may not file in the public record in this action any Protected Material. A Party that
9 seeks to file under seal any Protected Material must comply with the court’s rules and
10 procedures for doing so. Protected Material may only be filed under seal pursuant to a court
11 order authorizing the sealing of the specific Protected Material at issue. If a Receiving
12 Party’s request to file Protected Material under seal is denied by the court, then the
13 Receiving Party may file the Protected Material in the public record unless otherwise
14 instructed by the court.

15 However, nothing in this Order shall be construed as automatically permitting a
16 party to file under seal. Before any party files any document under seal such party shall
17 seek leave of Court and shall show “compelling reasons” (dispositive motion) or “good
18 cause” (non-dispositive motion) for filing under seal. *See Kamakana v. City and County*
19 *of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). Additionally, such party seeking to
20 file under seal shall, within the applicable deadline, file a redacted, unsealed version of any
21 motion, response or reply if such party is waiting for a ruling from the Court on filing an
22 unredacted, sealed version of the same document.² Further, no portion of the trial of the
23 matter shall be conducted under seal.

24 **13. FINAL DISPOSITION**

25 _____
26 ² The Court notes that in the event a party wants to use the other party’s confidential
27 designations to support or oppose a motion, the provisions of this paragraph would shift
28 the burden to that party to make the “compelling reasons” showing, which is inconsistent
with the case cited. In the event a party anticipates this scenario arising, the party wishing
to use the confidential information shall initiate a discovery dispute conference call
consistent with the terms of the Court’s Rule 16 Scheduling Order at least two weeks before
the filing in which they wish to reference the documents is due.

1 Within 90 days after the final disposition of this action, as defined in paragraph 4,
2 each Receiving Party must return all Protected Material to the Producing Party or destroy
3 such material. As used in this subdivision, “all Protected Material” includes all copies,
4 abstracts, compilations, summaries, and any other format reproducing or capturing any of
5 the Protected Material. Whether the Protected Material is returned or destroyed, within 30
6 days of receiving a request to be provided with written certification, the Receiving Party
7 must submit a written certification to the Producing Party (and, if not the same person or
8 entity, to the Designating Party) that (1) identifies (by category, where appropriate) all the
9 Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
10 has not retained any copies, abstracts, compilations, summaries or any other format
11 reproducing or capturing any of the Protected Material. Notwithstanding this provision,
12 Counsel are entitled to retain archival copies of all Protected Material and pleadings,
13 motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
14 deposition and trial exhibits, expert reports, attorney work product, and consultant and
15 expert work product, even if such materials contain Protected Material. Any such archival
16 copies that contain or constitute Protected Material remain subject to this Protective Order
17 as set forth in Section 4 (DURATION), above.

18 Dated this _____ day of _____, 202____.

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full
address], declare under penalty of perjury that I have read in its entirety and understand the
[Proposed] Joint Stipulated Protective Order that was issued by the United States District
Court for the District of Arizona in the case of McKesson Medical-Surgical, Inc. v. Apollo
Healthcare and Diagnostics, LLC, et al., Case No. 2:22-cv-01467-CDB. I agree to comply
with and to be bound by all the terms of this Joint Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any
manner any information or item that is subject to this Joint Stipulated Protective Order to
any person or entity except in strict compliance with the provisions of this [Proposed] Joint
Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for
the District of Arizona solely for the purpose of enforcing the terms of this Joint Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action.

Date: _____
City and State where sworn and signed: _____
Printed name: _____
Signature: _____